

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
January 11, 2007

(X) ACTION
() INFORMATION

I. TITLE: Public Hearing before the Board and Consideration for Final Approval

Proposed Amendments of Regulation 61-62, *Air Pollution Control Regulations and Standards*, to revise Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, Regulation 61-62.72, *Acid Rain*, Regulation 61-62.96, *Nitrogen Oxides (NO_x) Budget Trading Program*, and the South Carolina State Implementation Plan (SIP).

Document No. 3083

Legislative review is required.

II. SUBJECT: Request for Finding of Need and Reasonableness and Rationale Pursuant to S.C. Code Section 1-23-111.

III. FACTS:

1. On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," (also referred to as CAIR); and the "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units," (also referred to as the Clean Air Mercury Rule, or CAMR), respectively.

2. CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). SO₂ is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

3. CAMR was published in the *Federal Register* on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap and trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

4. EPA coordinated the concurrent release of CAMR with CAIR because a "co-benefit" of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

5. In accordance with EPA's final rule revisions, state agency programs must adopt and submit revisions to their SIPs to include the minimum program elements outlined in CAIR. State agency programs must also adopt and submit implementation plans (referred to as section 111(d) plans) to include the minimum program elements outlined in CAMR. States may choose to adopt provisions that differ from the Federal rules; however, to be approvable, the State's regulation must be at least as stringent as EPA's final rules or regulations.

6. A Summary of Revisions and Text of Proposed Amendments are submitted as Attachments B and C, respectively.

7. A Notice of Drafting was published in the *State Register* on July 22, 2005, initiating the statutory process to amend R.61-62. A second notice extending the drafting period was published on February 24, 2006. Notice of the Department's intent to propose these regulations was expanded by publication on the Department's Internet Regulatory Information website in its monthly *DHEC Regulation Development Update*. The Department received numerous comments during the initial drafting comment period that were considered. Copies of the Drafting Notices are submitted as Attachments D and E.

8. The Department has met extensively with stakeholders during the development of the proposed amendments. In addition to many informal meetings, formal stakeholder meetings were conducted on October 10, 2005, November 4, 2005, December 7, 2005, January 30, 2006, June 22, 2006, and October 4, 2006. Meeting notes and responses to comments have been shared with all stakeholders throughout this process.

9. Pursuant to agency policy, the proposed regulation was reviewed internally by appropriate Department staff prior to requesting Board initial approval.

10. On September 14, 2006, the Board granted staff approval to publish a Notice of Proposed Regulation in the *State Register* and to conduct a staff informational forum. This notice was published on October 27, 2006, as Document No. 3083. Notice of the status of this proposed regulation was again published in the *DHEC Regulation Development Update*. The Department received numerous comments. An excerpt from the *State Register* notice is included as Attachment F.

11. On November 27, 2006, the Department held an Informational Forum led by staff. Members from the regulated community and other interested parties were present to submit oral and written comments. All comments received have been considered by the staff. A court reporter was present, and a transcript will be made available when completed. Comments received during the public comment period and at the forum, along with Departmental Responses, are provided in Attachment G.

12. The proposed regulations for public hearing have been internally reviewed by all appropriate staff.

13. Prior to the public hearing, commenters will be notified via e-mail and a posting on the Department's website of the Department's responses along with a reminder of the date and time of the public hearing before the Board.

14. Department staff is requesting a public hearing and a finding of need and reasonableness and rationale of the proposed amendment to R. 61-62, *Air Pollution Control Regulations and Standards*. If approved, the proposed amendment will be submitted to the legislature for review.

IV. ANALYSIS:

1. The amendments are needed in order to comply with Federal requirements. With respect to CAIR, the Department has made several modifications to the Federal amendments in areas where the State was given flexibility; however, these modifications do not make the amendments more stringent than the Federal requirements. The Department is proposing to be more stringent than the Federal CAMR by establishing a “Public Health Set-aside” of mercury allowances that will be permanently retired if unused. This will have the effect of reducing the mercury allocations to the affected units and, consequently, the amount of mercury emissions from coal-fired utilities in South Carolina.

2. See the Statements of Need and Reasonableness and Rationale submitted as Attachment A.

3. A copy of the Legal Authority is provided as Attachment H.

V. RECOMMENDATION:

Department staff recommends that, based upon the public hearing and the attached information, the Board find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review.

Myra C. Reece
Chief
Bureau of Air Quality

Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

Attachments

- A. Statement of Need and Reasonableness and Rationale
- B. Summary of Revisions
- C. Text of Proposed Amendments
- D. *State Register* Notice of Drafting Published July 22, 2005
- E. *State Register* Notice of Drafting Published February 24, 2006
- F. *State Register* Notice of Proposed Regulation Published October 27, 2006
- G. Summary of Comments Received and Departmental Responses
- H. Copy of Legal Authority

ATTACHMENT A

Statement of Need and Reasonableness and Rationale
Proposed amendment to Regulation 61-62, *Air Pollution Control Regulations and Standards*
and the *South Carolina Air Quality Implementation Plan*
January 11, 2007

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,” (also referred to as CAMR), respectively.

CAIR was published in the Federal Register on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the Federal Register on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap and trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006. Due to our lengthy regulation development process, the Department has informed the EPA that our SIP and 111(d) plan will not be submitted to them by their deadlines. The EPA has already finalized a Federal Implementation Plan (FIP) and 111(d) Plan for states not meeting the deadline. However, the EPA has assured the Department that it will withdraw its FIP and 111(d) Plan when the Department finalizes and submits its SIP and 111(d) Plan to them.

Legal Authority: The legal authority for Regulation 61-62 is Section 48-1-10 *et seq.*, S.C. Code of Laws.

Plan for Implementation: The proposed amendments will take effect upon approval by the Board of

Health and Environmental Control and the General Assembly, and publication in the *State Register*. The proposed amendments will be implemented by providing the regulated community with copies of the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulation is needed and is reasonable because it fulfills the Department's obligation to submit revisions to the State Implementation Plan (SIP) incorporating the finalized CAIR published by EPA on May 12, 2005, and to submit a 111(d) plan incorporating the finalized CAMR published by EPA on May 18, 2005. Most of EPA's finalized rules were incorporated; however, the Department is exercising its discretion by proposing options to the model rule that have been negotiated with stakeholders and are therefore better suited to South Carolina's needs.

DETERMINATION OF COSTS AND BENEFITS:

These revisions are being made to comply with a Federal mandate. The Department has worked with stakeholders to determine the best approach to implementing these regulations. For example, the Federal CAIR proposes an allowance reallocation schedule every five years, with the initial heat input at the beginning of the rule implementation used in the determination of allowances received. To be more responsive to changes in the market, the Department and the affected regulated community agreed on a four-year allocation schedule that utilizes the most current heat input data to determine the allowances received. This allows new facilities to enter into the programs more quickly, provides time for the regulated community to be responsive to changes, and considers changes in the regulated community's need for the allowances.

The Federal CAMR provides for a budget of mercury allowances that are distributed to coal-fired utilities in the State free of charge. These allowances can be sold or traded to other utilities participating in the EPA's cap-and-trade program, or they can be used by the utility to which they were given. Because South Carolina was allocated more allowances than historical data indicate that our utilities need and sixty water bodies in our State have fish consumption advisories because of mercury pollution, we have proposed establishing a "Public Health Set-aside" whereby twenty-five (25) percent of the allowances provided to each utility will be held in a special account. Each utility will have access to those allowances during the calendar year in which they were assigned. Any remaining unused allowances at the end of a calendar year would be held in the account until 2018. In 2018 and thereafter, the allocation of mercury allowances for each utility is further reduced. The allowances for each utility that have accumulated in the Public Health Set-aside account will be made available to the utility if emissions exceed the reduced allocations for the calendar years 2018, 2019, 2020, 2021, 2022, and 2023. At the end of the 2023 control period, any unused allowances in the utility's Public Health Set-aside account will be permanently retired.

The Department estimates that approximately 12.4% of the allowances in the State mercury budget for the 2010 through 2017 control periods will be retired. These are allowances that the regulated utilities would have received under the Federal CAMR. Since the mercury allowances are currently valued at approximately \$2,000.00 per allowance, this will result in a cost to the regulated utilities above and beyond the Federal CAMR. The estimated allowances to be retired represents approximately \$36,823,040.00 in money that could either be saved by the utilities by not having to buy allowances to meet compliance or by selling the extra allowances they do not need to generate revenue. While this seems like a great deal of money, the allowances considered in determining this amount are to be allocated and used over a period of time of fourteen years or more. Considering this, the value of the allowances expected to be retired represents approximately \$2,630,000.00 each year. In addition, the

nitrous oxide and sulfur dioxide emissions control equipment installed at coal-fired utilities as a requirement of CAIR also remove a significant amount of mercury. This co-benefit will result in fewer mercury allowances being needed by the utilities, and the Department expects many of the units with control technology to use significantly fewer mercury allowances than the Department allocates. These mercury allowances can be banked by the utilities for future use or sold to generate revenue.

While the rule to comply with the Federal CAMR that is being proposed by the Department will result in increased costs to the utilities, the Department believes that the benefits outweigh the costs. Mercury in South Carolina's waterways continues to be a major concern. Currently, sixty water bodies in the State have mercury fish consumption advisories. An advisory suggests a safe limit, or amount, of fish from the water body that a person can consume without suffering any harmful effects. When mercury enters the water, it can be changed to methylmercury by bacteria, which are then consumed by larger organisms. The methylmercury accumulates and its concentration increases as it moves up the food chain. Eventually, the larger fish which are caught and eaten by humans contain large amounts of methylmercury. Methylmercury can cause harmful effects in all people, but unborn and young children are most susceptible because the methylmercury affects the development of the nervous system and the brain. It can cause learning and motor skill disabilities.

No costs are expected to be incurred by the State or its political subdivision. Existing staff and resources will be utilized to implement these amendments.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed revisions are designed to significantly reduce the emissions of nitrous oxides, sulfur dioxides, and mercury. Nitrous oxides contribute to the formation of ozone and particulate matter, and sulfur dioxide contributes to the formation of particulate matter. Airborne mercury falls to the earth and (ends up) in bodies of water, where it can be converted into methylmercury. Methylmercury is consumed by fish, which are eaten by people. All of the pollutants (nitrous oxides, sulfur dioxide, and mercury) have been shown to have detrimental effects on the health of humans. The significant reductions in the emissions of these pollutants will protect the health of the residents of South Carolina.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

EPA has determined that the pollutants addressed by these rules cause an overwhelming detrimental effect on the health of humans. Ozone and particulate matter causes respiratory problems and illnesses, while mercury causes neurological disorders and has a greater affect on unborn babies and children. The EPA and the State believe that the environment and public health will benefit from implementing these rules to reduce the emissions of these pollutants.

STATEMENT OF RATIONALE:

These revisions are being promulgated in order to comply with a Federal mandate requiring states to lower emissions of nitrous oxides, sulfur dioxide, and mercury. Scientific studies have shown that nitrous oxides are a precursor to ozone and particulate matter, while sulfur dioxide is a precursor to particulate

matter, and that these pollutants have serious negative health consequences to the public. These include lung damage, aggravated asthma, and even death. The pathway of mercury from the combustion of coal to our waterways, to fish, and finally to humans has been well documented. When humans consume fish containing methylmercury, the methylmercury is almost completely absorbed into the bloodstream and distributed to all tissues, including the brain. In pregnant women, the methylmercury can be passed to the developing fetus, where it can negatively affect brain development. In young children, it can cause problems with verbal memory, language skills, motor function, attention span, and visual-spatial abilities. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The Department is proposing some additional requirements that go beyond the scope of the Federal CAMR. This will result in an increased cost to the regulated community beyond that proposed in the Federal CAMR; however, the Department believes the public health benefits achieved by the further reduction of mercury emissions to the environment outweigh the increased costs to the regulated community.

In 2006, fish advisories for mercury were issued for sixty water bodies in the State. These advisories were issued because samples of fish tissue taken from these water bodies repeatedly showed elevated levels of methylmercury that could be harmful if consumed in quantities that exceed the amount recommended by the advisory. Decreasing emissions of mercury from coal-fired utilities in South Carolina should reduce the amount of mercury that affects the waterways of the State and should reduce the number of fish consumption advisories issued.

ATTACHMENT B

Summary of Proposed Revisions to
Regulation 61-62, *Air Pollution Control Regulations and Standards*
and the *South Carolina Air Quality Implementation Plan*
January 11, 2007

R.61-62.60, South Carolina Designated Facility Plan And New Source Performance Standards

Bold = Section changed due to public comment received following publication of the proposed regulation in the *State Register* or due to clarification.

SECTION CITATION:	EXPLANATION OF CHANGE
R. 61-62.60, Subpart Da	R. 61-62.60, Subpart Da, has been amended to incorporate by reference Federal amendments.
R. 61-62.60, Subpart HHHH	All sections except 60.4140, 60.4141, and 60.4142 have been incorporated by referencing the Federal Clean Air Mercury Rule.
R. 61-62.60.4102	A definition for “utility” has been added.
R. 61-62.60.4102	The definition for “utility” has been revised to clarify responsibilities for multiple owners as per a comment from the EPA.
R. 61-62.60.4140(b)(v)	This paragraph creates the possibility of a mercury study funded by the sale of allowances from the Public Health Set-aside.
R. 61-62.60.4140 – 60.4142	The terms “allocate,” “reallocation,” “reimburse,” “distribute,” and “transfer” have been revised to be used consistently throughout the regulation as per a comment from the EPA and from Duke Energy. The word “utility” was changed to “Hg budget source” where necessary to clarify that allocations would be distributed to the Hg budget sources as per a comment from the EPA.
R. 61-62.60.4140(a)	The table in the Federal rule indicating the South Carolina Trading Budget has been modified to a text format to include only South Carolina’s annual budget and the revised annual budget after the 20% set-aside has been considered.
R. 61-62.60.4140(b)	This section has been added to explain the “Public Health Set-aside.”
R. 61-62.60.4140(c)(1)	The Department has revised this paragraph to state that it will allocate 75%, not 80%, of mercury allowances each control period between 2010 and 2017 and 100% in 2018 and thereafter, as per comments received from Santee Cooper and the Southern Environmental Law Center .

- R. 61-62.60.4140(c)(2)** This paragraph has been revised for clarity and to eliminate redundancy. Also, the Department revised the paragraph to state that it will allocate 25%, not 20%, of the allowances in each control period between 2010 and 2017 to a Public Health Set-aside account, as per comments from Santee Cooper and the Southern Environmental Law Center.
- R. 61-62.60.4140(c)(3)** This paragraph has been added to require utilities to submit a mercury emissions report, by the stated date, on an annual basis to the Department. This change was made as a result of comments from the regulated community (Duke Energy and Santee Cooper) and the EPA to enable the Department to transfer allowances from the Public Health Set-aside account prior to EPA's reconciliation of the accounts.
- R. 61-62.60.4140(c)(4)** This paragraph has been revised for clarity, to eliminate redundancy, to allow utilities to receive allowances from the Public Health Set-aside accounts up to 2023 instead of up to 2021 as originally proposed, and to require utilities to follow good operating practices to receive mercury allowances from the Public Health Set-aside accounts in 2018 through 2023. This change is a result of comments regarding the compromise with the stakeholders, such as Santee Cooper, to increase the Public Health Set-aside allocations from 20% to 25%.
- R. 61-62.60.4140(c)(4)(i)** The date whereby the Department will transfer allowances from the Public Health Set-aside account to a utility's compliance account has been changed to February 15 following the pertinent control period, and a reference was corrected, as per comments from the EPA.
- R. 61-62.60.4140(c)(4)(ii)** As per a comment from the EPA, this paragraph has been revised to clarify that allowances may be taken from the Public Health Set-aside account and sold to fund a study, and that these will not be available to the utilities for use if needed for compliance.
- R. 61-62.60.4140(c)(4)(iii)** This paragraph has been revised for clarity and to state that the allowances in the Public Health Set-aside will be available for compliance purposes by the utilities until 2023, not 2021, and that the allowances made available will be based on the mercury emissions report required in R. 61-62.60.4140(c)(3). The latter two changes are a result of comments received from the regulated community (Duke Energy and Santee Cooper) to enable the Department to transfer allowances from the Public Health Set-aside account prior to EPA's reconciliation of the accounts.
- R. 61-62.60.4140(c)(4)(iv)** This paragraph has been added to require utilities that

submit revised reports that reflect a reduction in mercury emissions will return any extra mercury allowances to the Department as per a comment from the EPA.

R. 61-62.60.4140(c)(5)

This paragraph was revised to change the retirement date for allowances in the Public Health Set-aside from 2022 to 2024 as per comments received from the regulated community (Duke Energy and Santee Cooper).

R. 61-62.60.4140(c)(6)

Paragraph R. 61-62.60.4140(c)(5) regarding the Department conducting a mercury study was renumbered. Also, per a comment from the stakeholders (Duke), the language was expanded to clarify that the Department would be making decisions regarding the study based upon recommendations from the Advisory Committee.

R. 61-62.60.4141

This section has been revised to reflect the timing for a four-year allocation period and the dates for submission of the allocations to the Administrator.

R. 61-62.60.4141(a)

This paragraph has been revised to establish November 17, 2006, as the firm date by which allowance allocations are to be submitted to the EPA for the 2010 through 2013 control periods as per a comment from the EPA.

R. 61-62.60.4141(b)(2)

This paragraph was deleted because the EPA is removing it from the Federal rule and suggested that the Department remove it also.

R. 61-62.60.4142

This section has been revised to explain how allowances will be allocated and what information will be used to calculate allocations.

R. 61-62.60.4142(b)

This paragraph has been revised for clarity by changing “allowances” to “baseline heat input” and to clarify how mercury allowances are being calculated as per comments from the EPA.

R. 61-62.60.4142(c)

This paragraph has been revised to reference 40 CFR part 75 to clarify the reference as 40 CFR part 75 as per a comment from the EPA and to correct references for paragraphs (a) and (b). The source of the heat input data was also clarified as per a comment from the EPA.

Regulation 61-62.72, Acid Rain

SECTION CITATION:

EXPLANATION OF CHANGE

R. 61-62.72

The format of R. 61-62.72 has been revised to incorporate the Federal rules by reference. It also includes the revisions in subparts A and B that are a result of the Clean Air Interstate

Rule.

R.61-62.96, Nitrogen Oxides (NO_x) Budget Trading Program General Provisions

SECTION CITATION:	EXPLANATION OF CHANGE
Title	The title has been changed to “NITROGEN OXIDES (NO _x) AND SULFUR DIOXIDE (SO ₂) BUDGET TRADING PROGRAM GENERAL PROVISIONS” to reflect the addition of the SO ₂ trading program into 61-62.96.
R. 61-62.96	Subparts A through I of R. 61-62.96 has been deleted and replaced by subparts AA through IIII. All subparts except subpart EE and subpart EEEE have been incorporated by referencing the Federal Clean Air Interstate Rule.
R. 61-62.96	The date in which subparts A through I of R. 61-62.96 will be repealed was changed to allow time for EPA to reconcile the allowance accounts. Also, the effective date of R. 61-62.96, subparts AAAA through IIII has been removed. These changes are a result of comments received from the EPA.
Subparts AA, BB, CC, II, AAA, BBB, FFF, HHH, III, AAAA, EEEE (96.342 (c)(2)), FFFF, and IIII	These subparts are being revised to incorporate nonsubstantive corrections promulgated by the EPA in the <i>Federal Register</i> on December 13, 2006 [71 FR HHHH, 28606].
R. 61-62.96.140	The table in the Federal Clean Air Interstate Rule indicating the South Carolina NO _x Trading Budget has been modified to a text format to include only South Carolina’s annual budget.
R. 61-62.96.141(a)	The paragraph has been revised to reflect the timing in which the Department must submit initial CAIR NO _x allowance allocations to the EPA for specific control periods.
R. 61-62.96.141(a)	This paragraph was revised to change the date by which the Department must submit to the EPA the CAIR NO_x allowance allocations for the control periods in 2009 through 2012 as per a comment from the EPA.
R. 61-62.96.141(b)	This paragraph was revised to clarify the period in which the Department would recalculate the baseline for determining CAIR NO_x allocations as per a comment from the EPA.
R. 61-62.96.141(c)	This paragraph was added to clarify the deadline by which the CAIR NO_x Ozone Season allowance allocations from the new source set-aside account would be submitted to the EPA for new units as per a comment from the EPA.

R. 61-62.96.141(b)	The paragraph has been revised to reflect the timing in which the Department must submit subsequent CAIR NO _x allowance allocations to the EPA, along with the control periods covered by the submission.
R. 61-62.96.142(a)	The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, and to revise the heat input adjustments from three categories to two categories.
R. 61-62.96.142(a)(1)(i) and (ii)	These paragraphs were revised to clarify how the allowances for 2009 through 2012 would be determined for the CAIR NO_x units as per a comment from the EPA.
R. 61-62.96.142(a)(2)	Language was added to this paragraph to state that the best available heat input data will be used for units that were not otherwise subjected to 40 CFR part 75 for the year and that heat input data will be obtained from the Administrator as per a comment from the EPA.
R. 61-62.96.142(b) and (c)	The new unit set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
R. 61-62.96.143(a)	The table in the Federal rule indicating the South Carolina NO _x compliance supplement pool has been modified to a text format to include only South Carolina's annual budget.
Title	The title "CAIR SO ₂ Trading Program" has been added before Subpart AAA.
R. 61-62.96.201 through 96.288	The section has been added to address the CAIR SO ₂ Trading Program General Provisions. This language incorporates the Federal Clean Air Interstate Rule by reference.
Title	The title "CAIR NO _x Ozone Season Trading Program" has been added before Subpart AAAA.
Subparts AAAA through IIII	The effective date of R. 61-62.96, subparts AAAA through IIII has been removed. This change is a result of a comment received from the EPA.
R. 61-62.96.302(42)	A definition of "electric generating unit" or "EGU" has been added.
R. 61-62.96.302	The definition of "electric generating unit" or "EGU" has been corrected as per a comment from the EPA.
R. 61-62.96.302(59)	A definition of "non-electric generating unit" or "non-EGU" has been added.

R. 61-62.96.302	The definitions of “fossil-fuel fired,” “commence operation,” and “unit” were revised as per a comment from the EPA.
R. 61-62.96.304(a)(1)(ii)	This paragraph was added to include non-electric generating units currently subjected to the NO _x SIP Call. The NO _x SIP Call trading program will be discontinued upon the initiation of the NO _x trading program for CAIR.
R. 61-62.96.304(a)(1)(ii)	This paragraph was deleted and replaced by R. 61-62.96.304(a)(1)(ii)(A) and (B) to clarify the non-EGU applicability requirements. This clarification was made based on a comment from the EPA.
R. 61-62.96.304(a)(2) & (b)	This statement was added and references to (a)(1) changed to (a)(1)(i) to ensure that these portions of the section applied to EGUs only and not to non-EGUs, as per a comment from the EPA.
R. 61-62.96.340(a)	The NO _x Ozone Season Trading Budget in EPA’s model rule was revised to include only the budget for South Carolina.
R. 61-62.96.340(b)	This paragraph was added to include the NO _x Ozone Season Trading Budget from the NO _x SIP Call for non-EGUs.
R. 61-62.96.341(a)(1)	The paragraph has been revised to reflect the timing in which the Department must submit initial CAIR NO _x allowance allocations to the EPA for specific control periods.
R. 61-62.96.341(a)(1)	This paragraph was revised to change the timing in which the Department must submit initial CAIR NO_x allowances to the EPA for specific control periods as per a comment from the EPA.
R. 61-62.96.341(a)(2)	The paragraph has been revised to reflect the timing in which the Department must submit subsequent CAIR NO _x allowance allocations to the EPA, along with the control periods covered by the submission.
R. 61-62.96.341(a)(2)	This paragraph was modified to clarify the period in which the Department will submit to the EPA CAIR NO_x Ozone Season allowance allocations as per a comment from the EPA.
R. 61-62.96.341(b)	The paragraph has been added to address the timing in which the Department must submit CAIR NO _x allowance allocations for non-EGUs.
R. 61-62.96.341(b)(1)	This paragraph was revised to change the timing in which the Department must submit initial CAIR NO_x allowance allocations for non-EGUs to the EPA for specific control periods as per a comment from the EPA.

R. 61-62.96.341(b)(1)(ii)	The table illustrating allocations for non-EGUs for 2009-2011 was replaced by text detailing that the allocations will be made in accordance with section 96.342(e) as per a comment from the EPA.
R. 61-62.96.341(b)(2)	This paragraph was modified to clarify the period in which the Department will submit to the EPA CAIR NO_x Ozone Season allowance allocations for non-EGUs as per a comment from the EPA.
R. 61-62.96.341(b)(3)	The date by which the Department must submit new unit set-aside allocations to the EPA has been changed as per a comment from the EPA.
R. 61-62.96.342(a)(1)	The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, and to revise the heat input adjustments based on fuel types from three categories to two categories.
R. 61-62.96.342(a)(1)(i) and (ii)	These paragraphs were revised to clarify how the allowances for 2009 through 2012 would be determined for the CAIR NO_x units as per a comment from the EPA.
R. 61-62.96.342(a)(2)	Language was added to this paragraph to state that the best available heat input data will be used for units that were not otherwise subjected to 40 CFR part 75 for the year and that heat input data will be obtained from the Administrator as per a comment from the EPA.
R. 61-62.96.342(a)(2)	A statement indicating that the Department would obtain the heat input data from the EPA's Clean Air Markets Division was added. The sections stating that the heat input would be obtained from data reported to the Department and addressing an alternate method for calculating heat input were deleted.
R. 61-62.96.342(b), (c) and (d)	The new source set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
R. 61-62.96.342(b)(3)	This paragraph was added to allow the EPA to take allowances from the CAIR allocations for penalties under the NO_x SIP Call trading program if a utility did not have enough allowances for 2008.
R. 61-62.96.342(c)(2)	This paragraph was revised to clarify the relevant NO_x program as per a comment from the EPA.
R. 61-62.96.342(e)	This section was added to address the incorporation of non-EGUs into the CAIR NO _x Ozone Season trading program. It

explains how allowances will be determined and establishes a new source set-aside for non-EGUs.

R. 61-62.96.342(e)(1) and (1)(i)

These statements were revised to correct a typographical error and to explain how the non-EGU allocations were determined for 2009-2011 as per a comment from the EPA.

R. 61-62.96.342(e)(1)(ii)

This statement was revised to clarify the heat input value that is to be used to determine allocations, as per a comment from the EPA.

R. 61-62.96.342(e)(2)

This statement was revised to clarify and make consistent terminology, as per a comment from the EPA.

R. 61-62.96.342(e)(3)

This statement was revised to indicate that the Department will use the best available data, not necessarily the data obtained from the EPA's Clean Air Market Division, to determine the heat input used to calculate allocations.

R. 61-62.96.342(g)(2)

The term “commences commercial operation” was changed to “commences operation” as per a comment from the EPA.

R. 61-62.96.342(g)(4)(ii)

The date that the Department will determine non-EGU new source set-aside allowances has been changed as per a comment from the EPA.

ATTACHMENT C
Text of Proposed amendment to
Regulation 61-62, *Air Pollution Control Regulations and Standards*
and the *South Carolina Air Quality Implementation Plan*
January 11, 2007

~~Strikethrough~~ – text deleted from current State rule or Federal rule.

Highlight – text incorporated from Federal rule.

Bold highlight – text added by State to Federal rule.

~~Highlight-strikethrough~~ – text deleted from proposed rule due to comments received or clarification.

Highlight Underline – text added to proposed rule due to comments received or clarification.

Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, subpart Da, is revised as follows:

Subpart Da – “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978”

The provisions of Title 40 CFR Part 60, subpart Da, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart Da			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 44	June 11, 1979	[44 FR 33613]
Revision	Vol. 48	January 27, 1983	[48 FR 3737]
Revision	Vol. 54	February 14, 1989	[54 FR 6663]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	February 14, 1990	[55 FR 5212]
Revision	Vol. 55	May 7, 1990	[55 FR 18876]
Revision	Vol. 63	September 16, 1998	[63 FR 49453, 49454]
Revision	Vol. 64	February 12, 1999	[64 FR 7464]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 66	April 10, 2001	[66 FR 18546]
Revision	Vol. 66	June 11, 2001	[66 FR 31177]
Revision	Vol. 66	August 14, 2001	[66 FR 42608]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 70	August 30, 2005	[70 FR 51266]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

Regulation 61-62.60, subpart HHHH, section 60.4101 through 60.4130 and sections 60.4150 through 60.4176, shall be added as follows:

Subpart HHHH– “Emission Guidelines And Compliance Times For Coal-Fired Electric Steam Generating Units”

The provisions of Title 40 CFR Part 60, subpart HHHH, sections 60.4101 through 60.4130 and sections 60.4150 through 60.4176, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

The following definition is added to Section 60.4102 Definitions:

Utility – a unit or a group of units located in South Carolina that are owned ~~and operated by a common entity and produce electricity for sale.~~ If the unit is owned by two or more utilities, the Hg designated representative or the alternate Hg designated representative shall specify the primary utility for the unit. The primary utility will be the recipient of any Hg allowances allocated for this unit.

The remainder of Section 60.4102 remains unchanged.

Regulation 61-62.60, subpart HHHH, sections 60.4140 through 60.4142, shall be added as follows:

Hg Allowance Allocations

Section 60.4140 South Carolina Trading Budget.

~~The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:~~

State	Annual EGU Hg Budget (tons)	
	2010-2017	2018 and thereafter
...		
South Carolina	0.580	0.229
...		

(a) The South Carolina trading budget for annual allocations of Hg allowances for 2010 through 2017 is 0.580 tons (18,560 ounces) per control period. The South Carolina trading budget for 2018 and thereafter is 0.229 tons (7,328 ounces) per control period.

(b) The Department will allocate Hg allowances to affected ~~utilities~~ Hg budget sources according to 60.4142.

(c) (1) The Department will distribute allowances to the affected ~~utilities~~ Hg budget sources as provided in Section 60.4142 equal to ~~80~~ 75 percent of the ~~utility's~~ Hg budget source's allocations for each control period in 2010-2017. The Department will distribute allowances to the affected ~~utilities~~ Hg

budget sources as provided in Section 60.4142 equal to 100 percent of the utility's Hg budget source's allocations for each control period in 2018 and thereafter.

(2) The Department will establish a Public Health Set-aside account for each affected utility in the State for the 2010-2017 control periods. The Department will allocate allowances to the utility's Public Health Set-aside accounts ~~will be allocated~~ allowances equal to ~~20~~ 25 percent of the utility's allocations for each control period in 2010-2017 as provided in section 60.4142. ~~The allowances in the Public Health Set-aside accounts will be available to the utilities during the control period in which they were assigned. Each utility's unused~~ The allowances will be held in its each utility's individual Public Health Set-aside account.

(3) On or before January 31 following the control periods 2010 through 2023, the total amount of a utility's Hg emissions, in ounces, for each Hg budget source subject to the requirements of this rule must be submitted to the Department for that control period by the utility. A utility that has a balance of zero allowances in its Public Health Set-aside account for 2018 or any year thereafter is not required to submit this report to the Department.

~~(ii 4) For each control period in 2010 through 2017 2023, a utility can receive allowances from its~~ the Department will transfer Hg allowances from a utility's Public Health Set-aside account to cover emissions that exceed its allocations for that control period, if necessary, based upon the Hg emissions reported according to paragraph (3) of this section. To be eligible to receive allowances from its Public Health Set-aside account, the utility must follow good operating practices and use air pollution control equipment whose primary or secondary function reduces mercury emissions. ~~the utility's Hg emissions must be greater than the number of allowances allocated to it during that control period.~~

~~(ii) Within 60 days after the accounts for each utility have been reconciled with the Clean Air Market Division of the EPA~~ Before midnight of February 15, if it is a business day, or, if February 15 is not a business day, midnight of the first business day thereafter immediately following each control period in 2010 through 2017 2023, the Department will ~~reimburse the utility~~ transfer Hg allowances from the utility's Public Health Set-aside account to the affected utility's Hg budget source account as prescribed in paragraph (c)(42)(i) of section 61-60.4140(c)(4) above.

~~(ii) For each control period in 2010 through 2017, a~~ A utility is eligible to receive allowances from its Public Health Set-aside account, up to but not exceeding the number of allowances put in its Public Health Set-aside account during the same control period, less any allowances sold as per paragraph (6) of this section. Unused Public Health Set-aside allowances will be banked in the utility's Public Health Set-aside account ~~and will not be available for use by the utility until 2018.~~

~~(iii) Nothing in this rule restricts the utility's ability to purchase, trade, or sell Hg emission allowances. Additionally, nothing in this rule prohibits the utility's ability to sell, trade, or bank Hg emission allowances that have been allocated to it by the Department.~~

~~(3)(iii) For each control period in~~ In the years 2018 through 2021 2023, any unused allowances in a utility's Public Health Set-aside account will be made available for use by the utility. To be eligible to receive allowances from its Public Health Set-aside account during the control periods in 2018 through 2021 2023, the utility's Hg emissions must be greater than the allowances allocated to it for the specific control period for in which its emissions exceeded its allocations, based upon the Hg emissions reported according to paragraph (3) of this section.

(iv) If the utility revises and resubmits its report of emissions, as required in paragraph (3)

above, to the Department and to the EPA after allowances have been transferred to its affected Hg budget source account from its Public Health Set-aside account and reports fewer emissions, and the EPA has not reconciled the account, any excess allowances must be returned to the State for transfer back into the utility's Public Health Set-aside account within fifteen (15) days of the submission of the revised report of emissions or within ten (10) days after the date of reconciliation.

(5) In ~~2022~~ 2024, any allowances remaining in any Public Health Set-aside account will be permanently retired and will not be available for reallocation to the utility.

~~(5) A portion of the allowances in the Public Health Set-aside may be sold to fund a Hg study in South Carolina. If a study is to be conducted, an advisory group will be formed to determine the scope of the study, the projected annual cost and the number of years over which the study will be conducted, prior to any Public Health Set-aside allowances being sold to fund the study. Representatives from the Department, the utilities that receive Hg allocations from South Carolina, and other stakeholders will be members of the advisory group.~~

(6) The Department will form an advisory committee consisting of but not limited to representatives from the Department, utilities that receive Hg allocations, environmental groups, and academia from South Carolina.

(i) The advisory committee will advise and make recommendations to the Department as to the necessity of a State Hg study, the scope of the study, the projected annual cost and the number of years over which the study will be conducted, and the methodology for determining how the utilities will share the burden of providing allowances from the Public Health Set-aside accounts. Hg allowances from the utilities' Public Health Set-aside accounts may be sold by the Department to fund this study and related studies at any time before the retirement of allowances remaining in the Public Health Set-aside accounts in 2024. Funds from the sale of these Hg allowances will be placed in a restricted account, and the money will be used only to fund studies as determined necessary and relevant by the Department.

~~(i)~~(ii) The Department and the advisory committee periodically may review any available data, to include but not limited to the state of Hg control technology, the results of Hg deposition studies conducted within or outside the scope of the study funded by the sale of Hg allowances, and information regarding Hg contamination in surface waters and fish tissue in South Carolina. The Department may issue a report of the findings.

(7) Using the information in this Hg report issued as per (c)(6) of this section, the Department may determine if additional control technology should be required of specific units or facilities. If additional control technologies are required, the Department will impose these requirements through an order, consent decree, permit revision, or revisions to this rule pertaining to the installation and operation of control technology on existing and new coal-fired units. Also, the Department could propose revisions to the Phase II allocations. The order, consent decree, permit revision, or revision to this rule will specify the schedule for installing and operating the required control technology.

Section 60.4141 Timing Requirements for Hg Allowance Allocations.

(a) By November 17, 2006 ~~or within 60 days after the effective date of this regulation, whichever is later~~, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, and 2013, and 2014.

(b) ~~(4)~~ By October 31, 2008 2010 and October 31 of each **four** years thereafter, the Department will

submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a)(1) and (b), for the control periods in the **fourth, fifth, sixth, and seventh** years after the year of the applicable deadline for submission under this paragraph.

~~(2) If the Department fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (b)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017.~~

~~(c)(1) By October 31, 2010 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.~~

~~(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017 and except that any Hg Budget unit that would otherwise be allocated Hg allowances under section 60.4142(a) and (b), as well as under section 60.4142(a), (c), and (d), for the applicable control period will be assumed to be allocated no Hg allowances under section 60.4142(a), (c), and (d) for the applicable control period.~~

Section 60.4142 Hg Allowance Allocations.

(a) For a Hg allowance allocation under section 60.4141(a) and (b), the Department will allocate Hg allowances to each utility-Hg budget source by summing the amount determined for each of the utility's Hg Budget units in the State.

(b) Each Hg budget unit's allowances baseline heat input will be determined using the single highest amount of the unit's heat input for the control periods that are five, six, seven and eight years before the first year of the ~~control~~ period for which the Hg allowance allocation is being calculated, except as provided in paragraph (c) of this section. Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

~~(a)(1) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under paragraph (b) of this section for each Hg Budget unit will be:~~

~~(i) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:~~

(A) Any portion of the unit's control period heat input for the year that results from the unit's combustion of lignite, multiplied by 3.0;

(B) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and

(C) Any portion of the unit's control period heat input for the year that is not covered by paragraph (a)(1)(i)(A) or (B) of this section, multiplied by 1.0.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2 c)(i) A unit's control period heat input for a calendar year under paragraphs (a)(1)(i) (a) and (b) of this section, and a unit's total ounces of Hg emissions during a calendar year under paragraph (c)(3) (b) of this section, will be determined in accordance with 40 CFR part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year for the year or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. The unit's types and amounts of fuel combusted, under paragraph (a)(1)(i) of this section, will be based on the best available data reported to the permitting authority for the unit. **Heat input data will be obtained from the EPA's Clean Air Market Division Administrator.**

(d) Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg budget unit to the total amount of baseline heat input of all such Hg budget units in the State and rounding to the nearest whole allowance as appropriate.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period multiplied divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

~~(b)(1) For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of Hg allowances equal to 95 percent of the adjusted budget for a control period in 2010 through 2014 and, 97 percent of the adjusted budget for a control period in 2015 through 2017, and 97 percent of the budget for a control period in 2018 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 60.4140 (except as provided in paragraph (d) of this section).~~

~~(2) The permitting authority will allocate Hg allowances to each Hg Budget unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of Hg allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.~~

~~(c) For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:~~

~~(1) The permitting authority will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated Hg allowances equal to 5 percent for a control period in 2010 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 60.4140.~~

~~(2) The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under paragraph (b) of this section. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.~~

~~(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the control period immediately before such control period.~~

~~(4) The permitting authority will review each Hg allowance allocation request under paragraph (c)(2) of this section and will allocate Hg allowances for each control period pursuant to such request as follows:~~

~~(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.~~

~~(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.~~

~~(iii) If the amount of Hg allowances in the new unit set aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each Hg Budget unit~~

~~covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.~~

~~(iv) If the amount of Hg allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of Hg allowances in the new unit set aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.~~

~~(v) The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.~~

~~(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated Hg allowances remain in the new unit set aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for 2010 through 2015, and 97 percent for 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under section 60.4140, and rounded to the nearest whole allowance as appropriate.~~

Regulation 61-62.72, Acid Rain, shall be replaced in its entirety to read as follows:

SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

REGULATION 61-62.72
ACID RAIN

Subpart A –“General Provisions”

The provisions of Title 40 CFR Part 72, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	June 21, 1993	[58 FR 33769]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 60	May 17, 1995	[60 FR 26510]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

40 CFR Part 72 subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 62	December 18, 1997	[62 FR 66278]
Revision	Vol. 63	October 27, 1998	[63 FR 57356]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 67	June 12, 2002	[67 FR 40394]
Revision	Vol. 67	August 16, 2002	[67 FR 53503]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

Subpart B – “Designated Representative”

The provisions of Title 40 CFR Part 72, subpart B, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart B			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

Subpart C – “Acid Rain Permit Applications”

The provisions of Title 40 CFR Part 72, subpart C, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart C			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart D – “Acid Rain Compliance Plan And Compliance Options”

The provisions of Title 40 CFR Part 72, subpart D, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart D			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218, 60234]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart E – “Acid Rain Permit Contents”

The provisions of Title 40 CFR Part 72, subpart E, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart E			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

Subpart F – “Federal Acid Rain Permit Issuance Procedures”

The provisions of Title 40 CFR Part 72, subpart F, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart F			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

Subpart G – “Acid Rain Phase II Implementation”

The provisions of Title 40 CFR Part 72, subpart G, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart G			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

Subpart H – “Permit Revisions”

The provisions of Title 40 CFR Part 72, subpart H, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart H			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]

Subpart I – “Compliance Certification”

The provisions of Title 40 CFR Part 72, subpart I, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart I			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

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SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS
REGULATION 61-62.72
ACID RAIN

SUBPART A—ACID RAIN PROGRAM GENERAL PROVISIONS.

72.1 Reserved

72.2 Definitions.

~~—The terms used in this regulation shall have the meanings set forth in title IV of the Clean Air Act, 42 U.S.C. 7401, *et seq.* as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7651, *et seq.* (November 15, 1990) and in this section as follows:~~

~~a. Acid Rain compliance option means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance plan submitted and approved in accordance with 61-62.72.4 of this regulation or regulations implementing section 407 of the Act.~~

~~b. Acid Rain emissions limitation means:~~

~~—(1) For the purposes of sulfur dioxide emissions:~~

~~—(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1), (a)(3), and (h) of the Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;~~

~~—(ii) As adjusted:~~

~~—(A) By allowances allocated by the Administrator pursuant to section 403, section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and section 406 of the Act;~~

~~—(B) By allowances allocated by the Administrator pursuant to subpart D of 40 CFR part 72; and thereafter~~

~~—(C) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(e); and~~

~~—(2) For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76 Amended as published at 61 Federal Register 67162 through 67164, December 19, 1996, as modified by an Acid Rain permit application submitted to the Department, and an Acid Rain permit issued by Department, in accordance with regulations implementing section 407 of the Act.~~

~~c. Acid Rain emissions reduction requirement means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.~~

~~d. Acid Rain permit or permit means the legally binding written document, or portion of such document, issued by the Department (following an opportunity for appeal pursuant to 40 CFR part 78 or [administrative appeals regulations established by the State]), including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.~~

~~e. Acid Rain Program means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the Act, 61-62.72.1 through 61-62.72.8, 40 CFR parts 72, 73, 75, 76, 77, and 78, and regulations implementing section 410 of the Act.~~

~~f. Act means the Clean Air Act, 42 U.S.C. §7401, et seq. as amended by Public Law No. 101-549 (November 15, 1990).~~

~~g. Actual SO₂ emissions rate means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the “1985 actual SO₂ emissions rate” for the unit shall be the rate specified by the Administrator in the NADB under the data field “SO₂RTE.”~~

~~h. Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.~~

~~i. Affected source means a source that includes one or more affected units that are subject to the acid rain provisions under Title IV of the Act.~~

~~j. Affected unit means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation.~~

~~k. Affiliate shall have the meaning set forth in section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.~~

~~l. Allocate or allocation means the initial crediting of an allowance by the Administrator to an Allowance Tracking System unit account or general account.~~

~~m. Allowance means an authorization by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.~~

~~n. Allowance deduction, or deduct when referring to allowances, means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount to account for the number of the tons of SO₂ emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR part 75, or for any other allowance surrender obligations of the Acid Rain Program.~~

~~o. Allowances held or hold allowances means the allowances recorded by the Administrator, or submitted to the Administrator for recordation in accordance with 40 CFR 73.50, in an Allowance Tracking System account.~~

~~p. Allowance Tracking System or ATS means the Acid Rain Program system by which the Administrator allocates, records, deducts, and tracks allowances.~~

~~q. Allowance Tracking System account means an account in the Allowance Tracking System established by the Administrator for purposes of allocating, holding, transferring, and using allowances.~~

~~r. Allowance transfer deadline means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit’s compliance subaccount for the purposes of meeting the unit’s Acid Rain emissions limitation requirements for sulfur dioxide for the previous calendar year.~~

~~s. Authorized account representative means a responsible natural person who is authorized, in accordance~~

with 40 CFR part 73, to transfer and otherwise dispose of allowances held in an Allowance Tracking System general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

t. ~~Basic Phase II allowance allocations means:~~

—(1) ~~For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j).~~

—(2) ~~For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 403 and section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j).~~

u. ~~Boiler means an enclosed fossil or other fuel fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.~~

v. ~~Certificate of representation means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the Acid Rain Program.~~

w. ~~Certifying Official means:~~

—(1) ~~For a corporation, a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;~~

—(2) ~~For partnership or sole proprietorship, a general partner or the proprietor, respectively; and~~

—(3) ~~For a local government entity or State, federal, or other public agency, either a principal executive officer or ranking elected official.~~

x. ~~Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 “Standard Classification of Coals by Rank.”~~

y. ~~Coal derived fuel means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal oil mixtures, and coke).~~

z. ~~Coal fired means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where a unit is “coal-fired” if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field “PRIMEFUEL.”~~

aa. ~~Cogeneration unit means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.~~

bb. ~~Commence commercial operation means to have begun to generate electricity for sale, including the~~

~~sale of test generation.~~

~~ee. Commence construction means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.~~

~~dd. Commence operation means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.~~

~~ee. Common stack means the exhaust of emissions from two or more units through a single flue.~~

~~ff. Compliance certification means a submission to the Administrator or Department that is required by 61-62.72.1 through 61-62.72.8, by 40 CFR part 72, 73, 75, 77, or 78, or by regulations implementing sections 407 or 410 of the Act to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with subpart B of 40 CFR part 72, 61-62.72.8, and the Acid Rain Program regulations generally.~~

~~gg. Compliance plan, for purposes of the Acid Rain Program, means the document submitted for an affected source in accordance with 61-62.72.3 section I and 61-62.72.3 section II specifying the method(s) (including one or more Acid Rain compliance options under 61-62.72.4 section II or regulations implementing section 407 of the Act) by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.~~

~~hh. Compliance subaccount means the subaccount in an affected unit's Allowance Tracking System account, established pursuant to 40 CFR 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's Acid Rain emissions limitation for sulfur dioxide.~~

~~ii. Compliance use date means the first calendar year for which an allowance may be used for purposes of meeting a unit's Acid Rain emissions limitation for sulfur dioxide.~~

~~jj. Construction means fabrication, erection, or installation of a unit or any portion of a unit.~~

~~kk. Customer means a purchaser of electricity not for the purposes of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.~~

~~ll. Department means the South Carolina Department of Health and Environmental Control.~~

~~mm. Designated representative means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in 40 CFR part 70 or in any other regulations implementing title V of the Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.~~

~~nn. Diesel fuel means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for~~

~~Testing and Materials ASTM D975-91, “Standard Specification for Diesel Fuel Oils.”~~

~~oo. Direct public utility ownership means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.~~

~~pp. Draft Acid Rain permit or draft permit means the version of the Acid Rain permit, or the Acid Rain portion of an operating permit, that the Department offers for public comment.~~

~~qq. Effective date of this Part 70 regulation, including any partial or interim program approved under this Part, shall be the effective date of approval by the Administrator as published in the Federal Register.~~

~~rr. Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative and as determined by the Administrator, in accordance with the emissions monitoring requirements of 40 CFR part 75.~~

~~ss. EPA means the United States Environmental Protection Agency.~~

~~tt. Excess emissions means:~~

~~—— (1) Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the unit; and~~

~~—— (2) Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the Acid Rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit’s heat input for the year.~~

~~uu. Existing unit means a unit (including a unit subject to section 111 of the Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. “Existing unit” does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any “existing unit” that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an “existing unit.”~~

~~vv. Facility means any institutional, commercial, or industrial structure, installation, plant, source, or building.~~

~~ww. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

~~xx. Fossil fuel fired means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.~~

~~yy. Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-90a, “Standard Specification for Fuel Oils,” and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.~~

~~zz. Gas-fired means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90 percent of the average annual heat input during the previous three~~

~~calendar years and for at least 85 percent of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.~~

~~Aaa. General Account means an Allowance Tracking System account that is not a unit account.~~

~~Bbb. Generator means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).~~

~~ccc. Generator output capacity means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.~~

~~Ddd. Heat input means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~Eee. Independent power production facility (IPP) means a source that:~~

- ~~—— (1) Is nonrecourse project financed, as defined by the Secretary of Energy at 10 CFR part 715;~~
- ~~—— (2) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale; and~~
- ~~—— (3) Is a new unit required to hold allowances under title IV of the Act;~~
- ~~—— (4) Provided that direct public utility ownership of the equipment comprising the facility does not exceed 50 percent.~~

~~Fff. Life of the unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

- ~~—— (1) For the life of the unit;~~
- ~~—— (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~
- ~~—— (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~Ggg. Nameplate capacity means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.~~

~~Hhh. National Allowance Data Base or NADB means the database established by the Administrator under section 402(4)(C) of the Act.~~

~~iii. Natural gas means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions.~~

~~Jjj. New unit means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.~~

~~Kkk. Offset plan means a plan pursuant to 40 CFR part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.~~

~~Lll. Oil fired means the combustion of: fuel oil for more than 10 percent of the average annual heat input during the previous three calendar years or for more than 15 percent of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any.~~

~~mmm. Operating permit means a permit issued under 40 CFR part 70 and any other regulations implementing title V of the Act.~~

~~Nnn. Owner means any of the following persons:~~

~~— (1) Any holder of any portion of the legal or equitable title in an affected unit; or~~

~~— (2) Any holder of a leasehold interest in an affected unit; or~~

~~— (3) Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or~~

~~— (4) With respect to any Allowance Tracking System general account, any person identified in the submission required by 40 CFR 73.31(e) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.~~

~~Ooo. Owner or operator means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.~~

~~Ppp. Permit revision means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 61-62.72.7 of this regulation.~~

~~Qqq. Phase II means the Acid Rain Program period beginning January 1, 2000, and continuing into the future thereafter.~~

~~Rrr. Potential electrical output capacity means the MWe capacity rating for the units which shall be equal to 33 percent of the maximum design heat input capacity of the steam generating unit, as calculated according to appendix D of 40 CFR part 72.~~

~~Sss. Power distribution system means the portion of an electricity grid owned or operated by a utility that~~

~~is dedicated to delivering electric energy to customers.~~

~~Ttt. Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:~~

~~—— (1) A power sales agreement;~~

~~—— (2) A State regulatory authority order requiring a utility to:~~

~~—— (i) Enter into a power sales agreement with the facility;~~

~~—— (ii) Purchase from the facility; or~~

~~—— (iii) Enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;~~

~~—— (3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source is executed on or before November 15, 1992; or~~

~~—— (4) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.~~

~~Uuu. Power sales agreement is a legally binding agreement between a QF, IPP, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.~~

~~Vvv. Primary fuel or primary fuel supply means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.~~

~~www. Proposed Acid Rain permit or proposed permit means the version of an Acid Rain permit that the Department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review period under 40 CFR 70.8(e).~~

~~xxx. Qualifying facility (QF) means a “qualifying small power production facility” within the meaning of section 3(17)(C) of the Federal Power Act or a “qualifying cogeneration facility” within the meaning of section 3(18)(B) of the Federal Power Act.~~

~~Yyy. Qualifying power purchase commitment means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:~~

~~—— (1) The identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and~~

~~—— (2) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.~~

~~Zzz. Qualifying repowering technology means:~~

~~—(1) Replacement of an existing coal fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or~~

~~—(2) Any oil or gas fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.~~

~~Aaaa. Receive or receipt of means the date the Administrator or Department comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the Administrator or Department in the regular course of business.~~

~~Bbbb. Recordation, record, or recorded means, with regard to allowances, the transfer of allowances by the Administrator from one Allowance Tracking System account or subaccount to another.~~

~~cccc. Schedule of compliance means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the Acid Rain Program, including any applicable Acid Rain permit requirement.~~

~~Dddd. Secretary of Energy means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.~~

~~Eeee. Simple combustion turbine means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.~~

~~Ffff. Solid waste incinerator means a source as defined in section 129(g)(1) of the Act.~~

~~Gggg. Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Act. For purposes of section 502(c) of the Act, a "source," including a "source" with multiple units, shall be considered a single "facility."~~

~~Hhhh. Stack means a structure that includes one or more flues and the housing for the flues.~~

~~iiii. State means the State of South Carolina or one of the 48 contiguous States and District of Columbia, and includes any non federal authorities, including local agencies, interstate associations, and State wide agencies with approved State operating permit programs. The term "State" shall have its conventional meaning where such meaning is clear from the context.~~

~~Jjjj. State operating permit program means an operating permit program that the Administrator has approved as meeting the requirements of titles IV and V of the Act and 40 CFR parts 70 and 72.~~

~~Kkkk. Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation.~~

~~——(1) In person;~~

~~——(2) By United States Postal Service ; or~~

~~——(3) By other equivalent means of dispatch or transmission , and delivery . Compliance with any “submission”, “service”, or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

~~Llll. Ton or tonnage means any “short ton” (i.e., 2,000 pounds). For the purpose of determining compliance with the Acid Rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.~~

~~mmmm. Total planned net output capacity means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990. “Total installed net output capacity” shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.~~

~~Nnnn. Unit means a fossil fuel fired combustion device.~~

~~Oooo. Unit account means an Allowance Tracking System account, established by the Administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).~~

~~pppp. Utility means any person that sells electricity.~~

~~Qqqq. Utility competitive bid solicitation is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been “selected” in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.~~

~~Rrrr. Utility regulatory authority means an authority, board, commission, or other entity (limited to the local , State , or federal level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.~~

~~Ssss. Utility unit means a unit owned or operated by a utility:~~

~~——(1) That serves a generator that produces electricity for sale, or~~

~~——(2) That during 1985, served a generator that produced electricity for sale.~~

~~——(3) Notwithstanding paragraphs (1) and (2) of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the Acid Rain Program.~~

~~——(4) Notwithstanding paragraphs (1) and (2) of this definition, a unit that cogenerates steam and~~

~~electricity is not a utility unit for purposes of the Acid Rain Program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.~~

~~72.3 Measurements, Abbreviations, and Acronyms.~~

~~—Measurements, abbreviations, and acronyms used in this regulation are defined as follows:~~

~~—ASTM—American Society for Testing and Materials~~

~~—Btu—British thermal unit.~~

~~—CFR—Code of Federal Regulations~~

~~—DOE—Department of Energy.~~

~~—MmBtu—million Btu.~~

~~—MWe—megawatt electrical.~~

~~—SO₂—sulfur dioxide~~

~~72.4 72.5 Reserved~~

~~72.6 Applicability.~~

~~a. Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the Acid Rain Program:~~

~~—(1) A unit listed in Table 1 of 40 CFR 73.10(a).~~

~~—(2) An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under paragraph (b) of this section.~~

~~—(3) A utility unit, except a unit under paragraph (b) of this section, that:~~

~~—(i) Is a new unit;~~

~~—(ii) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990.~~

~~—(iii) Was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;~~

~~—(iv) Was an exempt cogeneration facility under paragraph (b)(4) of this section but during any three calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one third of its potential electrical out put capacity and more than 219,000 MWe-hrs electric output, on a gross basis;~~

~~—(v) Was an exempt qualifying facility under paragraph (b)(5) of this section but, at any time~~

~~after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;~~

~~—— (vi) Was an exempt independent power production facility under paragraph (b)(6) but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or~~

~~—— (vii) Was an exempt solid waste incinerator under paragraph (b)(7) of this section but during any three calendar year period after November 15, 1990 consumes 20 percent or more (on a Btu basis) fossil fuel.~~

~~b. The following types of units are not affected units subject to the requirements of the Acid Rain Program:~~

~~—— (1) A simple combustion turbine that commenced operation before November 15, 1990.~~

~~—— (2) Any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.~~

~~—— (3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.~~

~~—— (4) A cogeneration facility which:~~

~~—— (i) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one third its potential electrical output capacity or equal to or less than 219,000 MWe hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or~~

~~—— (ii) For units that commenced construction after November 15, 1990, supplies equal to or less than one third its potential electrical output capacity or equal to or less than 219,000 MWe hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.~~

~~—— (5) A qualifying facility that:~~

~~—— (i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~

~~—— (ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates~~

~~of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.~~

~~— (6) An independent power production facility that:~~

~~— (i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~

~~— (ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.~~

~~— (7) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.~~

~~— (8) A non-utility unit.~~

~~— (9) A unit for which an exemption under 62.72.7, 62.72.8, or 62.72.14 of this Standard is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of 62.72.7, 62.72.8, or 62.72.14 as applicable to the exemption.~~

~~e. A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR 72.6(e). The Administrator's determination of applicability shall be binding upon the Department, unless the petition is found to have contained significant errors or omissions.~~

~~— (1) Petition Content. The petition shall be in writing and include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statement set forth at 62.72.21(b)(2). Within 10 business days of receipt of any written determination by the Department, covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Department's response.~~

~~— (2) Timing. The petition may be submitted to the Department at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit.~~

72.7 New Units Exemption.

~~(a) Applicability. This section applies to any new utility unit that has not previously lost an exemption under paragraph (f)(4) of this section and that, in each year starting with the first year for which the unit is to be exempt under this section:~~

~~— (1) Serves during the entire year (except for any period before the unit commenced commercial operation) one or more generators with total nameplate capacity of 25 MWe or less;~~

~~— (2) Burns fuel that does not include any coal or coal derived fuel (except coal derived gaseous fuel with a total sulfur content no greater than natural gas); and~~

~~—(3) Burns gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section) and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section).~~

~~(b) (1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is not allocated any allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, and sections 72.10 through 72.13.~~

~~—(2) The exemption under paragraph (b)(1) of this section shall be effective on January 1 of the first full calendar year for which the unit meets the requirements of paragraph (a) of this section. By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall be submitted to permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement, which shall be in a format prescribed by the Administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state that the owners and operators of the unit will comply with paragraph (f) of this section.~~

~~—(3) After receipt of the statement under paragraph (b)(2) of this section, the permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (b)(1), (d), and (f) of this section.~~

~~(c) (1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is allocated one or more allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, and sections 72.10 through 72.13, if each of the following requirements are met:~~

~~—(i) The designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit submits to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a statement (in a format prescribed by the Administrator) that:~~

~~—(A) Identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight;~~

~~—(B) States that the owners and operators of the unit will comply with paragraph (f) of this section;~~

~~—(C) Surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for the first year that the unit is to be exempt under this section and for each subsequent year; and~~

~~—(D) Surrenders any proceeds for allowances under paragraph (c)(1)(i)(C) or this section withheld from the unit under section 73.10 of this chapter. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator.~~

~~———— (ii) The Administrator deducts from the unit's Allowance Tracking System account allowances under paragraph (c)(1)(i)(C) of this section and receives proceeds under paragraph (c)(1)(i)(D) of this section. Within 5 business days of receiving a statement in accordance with paragraph (c)(1)(i) of this section, the Administrator shall either deduct the allowances under paragraph (c)(1)(i)(C) of this section or notify the owners and operators that there are insufficient allowances to make such deductions. Upon completion of such deductions and receipt of such proceeds, the Administrator will close the unit's Allowance Tracking System account and notify the designated representative (or certifying official) and, if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit, the permitting authority.~~

~~———— (2) The exemption under paragraph (c)(1) of this section shall be effective on January 1 of the first full calendar year for which the requirements of paragraphs (a) and (c)(1) of this section are met. After notification by the Administrator under the third sentence of paragraph (c)(1)(ii) of this section, the permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (c)(1), (d), and (f) of this section.~~

~~(d) Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05 percent by weight or less shall be determined as follows using a method of determining sulfur content that provides information with reasonable precision, reliability, accessibility, and timeliness:~~

~~———— (1) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;~~

~~———— (2) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:~~

$$\sum_{n=1}^{\text{last}} \% S_n V_n d_n$$

$$\% S_{\text{annual}} = \frac{\sum_{n=1}^{\text{last}} V_n d_n}{\sum_{n=1}^{\text{last}} V_n d_n}$$

Where:

~~———— $\% S_{\text{annual}}$ = annual average sulfur content of the fuel burned during the year by the unit, as a percentage by weight;~~

~~———— $\% S_n$ = sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight;~~

~~———— V_n = volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet;~~

~~———— d_n = density of the nth sample of the fuel delivered during the year to the unit, in lb per standard~~

cubic foot; and

~~— n = each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.~~

~~— (3) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in paragraph (d)(2) of this section. In lieu of the factor, volume times density ($V_n d_n$), in the equation, the factor, mass (M_n), may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit of which the nth sample is taken, in lb; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in lb.~~

~~(e) (1) A utility unit that was issued a written exemption under this section and that meets the requirements of paragraph (a) of this section shall be exempt from the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, and sections 72.10 through 72.13 and shall be subject to the requirements of paragraphs (a), (d), (e)(2), and (f) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (e)(1) and paragraphs (a), (d), (e)(2), and (f) of this section.~~

~~— (2) If a utility unit under paragraph (e)(1) of this section is allocated one or more allowances under subpart B of part 73 of this chapter, the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement (in a format prescribed by the Administrator) meeting the requirements of paragraph (e)(1)(i)(C) and (D) of this section. The statement shall be submitted by June 31, 1998 and, if the Administrator is not the permitting authority, a copy shall be submitted to the Administrator.~~

~~(f) Special Provisions:~~

~~— (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall:~~

~~— (i) Comply with the requirements of paragraph (a) of this section for all periods for which the unit is exempt under this section; and~~

~~— (ii) Comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~

~~— (2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.~~

~~— (3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5 year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the~~

~~permitting authority.~~

~~———— (i) Such records shall include, for each delivery of fuel to the unit or for fuel delivered to the unit continuously by pipeline, the type of fuel, the sulfur content, and the sulfur content of each sample taken.~~

~~———— (ii) The owners and operators bear the burden of proof that the requirements of paragraph (a) of this section are met.~~

~~———— (4) Loss of exemption.~~

~~———— (i) On the earliest of the following dates, a unit exempt under paragraphs (b), (c), or (e) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:~~

~~———— (A) The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe;~~

~~———— (B) The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with a total sulfur content no greater than natural gas; or~~

~~———— (C) January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section) or for nongaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section).~~

~~———— (ii) Notwithstanding section 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.~~

~~———— (iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.~~

~~72.8 Retired Units Exemption.~~

~~(a) This section applies to any affected unit (except for an opt-in source) that is permanently retired.~~

~~(b) (1) Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, sections 72.10 through 72.13, and subpart B of part 73 of this chapter.~~

~~———— (2) The exemption under paragraph (b)(1) of this section shall become effective on January 1 of the first full calendar year during which that the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subpart B of this part), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of this section.~~

~~—(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (b)(1) and (d) of this section.~~

~~(c) A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, sections 72.10 through 72.13, and subpart B of part 73 of this chapter, and shall be subject to the requirements of paragraph (d) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (c) and paragraph (d) of this section.~~

~~(d) Special Provisions:~~

~~—(1) A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of part 73 of this chapter. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of this part 72 and an annual certification report in accordance with sections 72.90 through 72.92 and is subject to sections 72.95 and 72.96.~~

~~—(2) A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete Acid Rain permit application under section 72.31 for the unit not less than 24 months prior to the later of January 1, 2000 or the date on which the unit is first to resume operation.~~

~~—(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~

~~—(4) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.~~

~~—(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5 year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.~~

~~—(6) Loss of exemption:~~

~~—(i) On the earlier of the following dates, a unit exempt under paragraph (b) or (c) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:~~

~~—(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or~~

~~————— (B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.~~

~~————— (ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.~~

~~72.9 Standard Requirements.~~

~~a. Permit Requirements.~~

~~————— (1) The designated representative of each affected source and each affected unit at the source shall:~~

~~————— (i) Submit a complete Acid Rain permit application under this part in accordance with the deadlines specified in 61-62.72.3 section I;~~

~~————— (ii) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit.~~

~~————— (2) The owners and operators of each affected source and each affected unit at the source shall:~~

~~————— (i) Operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the Department; and~~

~~————— (ii) Have an Acid Rain Permit.~~

~~b. Monitoring Requirements.~~

~~————— (1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR part 75.~~

~~————— (2) The emissions measurements recorded and reported in accordance with 40 CFR part 75 shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.~~

~~————— (3) The requirements of 40 CFR part 75 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.~~

~~c. Sulfur Dioxide Requirements.~~

~~————— (1) The owners and operators of each source and each affected unit at the source shall:~~

~~————— (i) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and~~

~~————— (ii) Comply with the applicable Acid Rain emissions limitation for sulfur dioxide.~~

~~— (2) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.~~

~~— (3) An affected unit shall be subject to the requirements under paragraph (c)(1) of this section as follows:~~

~~— (i) Starting January 1, 2000, an affected unit under 61-62.72.1 section III(a)(2); or~~

~~— (ii) Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR part 75, an affected unit under 61-62.72.1 section III(a)(3).~~

~~— (4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.~~

~~— (5) An allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1)(i) of this section, prior to the calendar year for which the allowance was allocated.~~

~~— (6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or an exemption under 61-62.72.1 section IV, 61-62.72.1 section V, or 61-62.72.1 section XI and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.~~

~~— (7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.~~

~~d. Nitrogen Oxides Requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.~~

~~e. Excess Emissions Requirements.~~

~~— (1) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the Administrator, as required under 40 CFR part 77, and submit a copy to the Department.~~

~~— (2) The owners and operators of an affected unit that has excess emissions in any calendar year shall:~~

~~— (i) Pay to the Administrator without demand the penalty required, and pay to the Administrator upon demand the interest on that penalty, as required by 40 CFR part 77; and~~

~~— (ii) Comply with the terms of an approved offset plan, as required by 40 CFR part 77.~~

~~f. Record keeping and Reporting Requirements.~~

~~— (1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Administrator or Department.~~

~~— (i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate~~

~~of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such 5 year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.~~

~~———— (ii) All emissions monitoring information, in accordance with 40 CFR part 75; provided that to the extent that 40 CFR Part 75 provides for a 3 year period for recordkeeping, the 3 year period shall apply.~~

~~———— (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program.~~

~~———— (iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.~~

~~———— (2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 61 62.72.8 and 40 CFR part 75.~~

~~g. Liability.~~

~~———— (1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or an exemption under 61 62.72.4, 61 62.72.5 or 61 62.72.11, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the Administrator pursuant to section 113(c) of the Act and by the Department pursuant to the Department's enforcement authority.~~

~~———— (2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement by the Administrator pursuant to section 113(c) of the Act and 18 U.S.C. 1001 and by the Department pursuant to the Department's enforcement authority.~~

~~———— (3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.~~

~~———— (4) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.~~

~~———— (5) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.~~

~~———— (6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under 61 62.72.4 section II (Phase II repowering extension plans), section 407 of the Act and regulations implementing section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.~~

~~—(7) Each violation of a provision of 61-62.72.1 through 61-62.72.8 and 40 CFR parts 72, 73, 75, 77, and 78, and regulations implementing sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.~~

~~(h) Effect on Other Authorities. No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or an exemption under 61-62.72.1 section IV, 61-62.72.1 section V, or 61-62.72 section XI shall be construed as:~~

~~—(1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;~~

~~—(2) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;~~

~~—(3) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law;~~

~~—(4) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or~~

~~—(5) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.~~

~~72.10-72.13 Reserved.~~

~~72.14 Industrial Utility Units Exemptions.~~

~~(a) Applicability. This section applies to any non-cogeneration, utility unit that has not previously lost an exemption under paragraph (d)(4) of this section and that meets the following criteria:~~

~~—(1) Starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section and thereafter, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;~~

~~—(2) On or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement and any related power purchase agreement with a person whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority, requiring the generator or generators served by the unit to produce electricity for sale only for incidental electricity sales to such person;~~

~~—(3) The unit served or serves one or more generators that, in 1985 or any year thereafter, actually produced electricity for sale only for incidental electricity sales required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section; and~~

~~— (4) Incidental electricity sales, under this section, are total annual sales of electricity produced by a generator that do not exceed 10 percent of the nameplate capacity of that generator times 8,760 hours per year and do not exceed 10 percent of the actual annual electric output of that generator.~~

~~(b) Petition for exemption. The designated representative (authorized in accordance with subpart B of this part) of a unit under paragraph (a) of this section may submit to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a complete petition for an exemption for the unit from the requirements of the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6, and sections 72.10 through 72.13. If the Administrator is not the permitting authority, a copy of the petition shall be submitted to the Administrator. A complete petition shall include the following elements in a format prescribed by the Administrator:~~

~~— (1) Identification of the unit;~~

~~— (2) A statement that the unit is not a cogeneration unit;~~

~~— (3) A list of the current owners and operators of the unit and any other owners and operators of the unit, starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section, and a statement that, starting on that date, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;~~

~~— (4) A summary of the terms of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section, including the date on which the agreement was signed, the amount of electricity that may be required to be produced for sale by each generator served by the unit, and the provisions for expiration or termination of the agreement;~~

~~— (5) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;~~

~~— (6) The nameplate capacity of each generator served by the unit;~~

~~— (7) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section;~~

~~— (8) A statement that each generator served by the unit actually produced electricity for sale only for incidental electricity sales (in accordance with paragraph (a)(4) of this section) required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section; and~~

~~— (9) The special provisions of paragraph (d) of this section.~~

~~(c) Permitting Authority's Action.~~

~~— (1) (i) For any unit meeting the requirements of paragraphs (a) and (b) of this section, the~~

~~permitting authority shall issue an exemption from the requirements of the Acid Rain Program, except for the provisions of this section, sections 72.2 through 72.6 and sections 72.10 through 72.13.~~

~~—— (ii) If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of paragraph (a) of this section are met, the permitting authority shall deny an exemption under this section.~~

~~—— (2) In issuing or denying an exemption under paragraph (c)(1) of this section, the permitting authority shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying draft, proposed (if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit), and final Acid Rain permits.~~

~~—— (3) An exemption issued under paragraph (c)(1)(i) of this section shall become effective on January 1 of the first full year the unit meets the requirements of paragraph (a) of this section.~~

~~—— (4) An exemption issued under paragraph (c)(1)(i) of this section shall be effective until the date on which the unit loses the exemption under paragraph (d)(4) of this section.~~

~~—— (5) After issuance of the exemption under paragraphs (c)(1) and (2) of this section, the permitting authority shall amend under section 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (c)(1)(i) and (d) of this section.~~

~~(d) Special Provisions:~~

~~—— (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~

~~—— (2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.~~

~~—— (3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The owners and operators bear the burden of proof that the requirements of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. Such records shall include the following information:~~

~~—— (i) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;~~

~~—— (ii) The nameplate capacity of each generator served by the unit; and~~

~~—— (iii) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section.~~

~~—— (4) Loss of exemption.~~

~~—— (i) On the earliest of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:~~

~~—— (A) The first date on which there is an owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof, whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority.~~

~~—— (B) If any generator served by the unit actually produces any electricity for sale other than for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section, then the day after the date on which such electricity is sold.~~

~~—— (C) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale is not required under that interconnection agreement or related power purchase agreement or successor agreement or where such sale will result in total sales for a calendar year exceeding 10 percent of the nameplate capacity of that generator times 8,769 hours per year, then the day after the date on which such sale is made.~~

~~—— (D) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale results in total sales for a calendar year exceeding 10 percent of the actual electric output of the generator for that year, then January 1 of the year after such year.~~

~~—— (E) If the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section expires or is terminated, no successor agreement under paragraph (d)(4)(ii) of this section is in effect, and any generator served by the unit actually produces any electricity for sale, then the day after the date on which such electricity is sold.~~

~~—— (ii) A “successor agreement” is an agreement that:~~

~~—— (A) Modifies, replaces or supersedes the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section;~~

~~—— (B) Is between the owners and operators of the unit and a person that is contractually obligated to sell electricity to the owners and operators of the unit and either whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority; and~~

~~—— (C) Requires the generator served by the unit to produce electricity for sale to the person under paragraph (d)(4)(ii)(B) of this section and only for incidental electricity sales, such that the total amount of electricity that such generator is required to produce for sale under the interconnection agreement or related power purchase agreement (to the extent they are still in effect) and the successor agreement shall not exceed the total amount of electricity that such generator was required to produce for sale under the interconnection agreement or related power purchase agreement under paragraph (a)(2) of~~

~~this section.~~

~~—— (iii) Notwithstanding section 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.~~

~~—— (iv) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.~~

~~72.15-72.19 Reserved.~~

~~SUBPART B—DESIGNATED REPRESENTATIVE.~~

~~72.20 Reserved.~~

~~72.21 Submissions.~~

~~a. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the Administrator in accordance with subpart B of 40 CFR part 72 and, concurrently, shall submit a copy to the Department. Whenever the term “designated representative” is used in this regulation, the term shall be construed to include the alternate designated representative.~~

~~b. Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.~~

~~c. In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature:~~

~~—— (1) The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”~~

~~—— (2) The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”~~

~~d. The Department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with paragraphs (b) and (c) of this section.~~

~~e. (1) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:~~

~~—— (i) By the date of submission, of any Acid Rain Program submissions by the designated representative;~~

~~—— (ii) Within 10 business days of receipt of a determination, of any written determination by the Administrator or the Department; and~~

~~—— (iii) Provided that the submission or determination covers the source or the unit.~~

~~—— (2) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under paragraph (e)(1) of this section, unless the owner or operator expressly waives the right to receive such a copy.~~

~~72.22-72.24 Reserved.~~

~~72.25 Objections.~~

~~a. Except as provided in 40 CFR 72.23, no objection or other communication received by the Administrator or the Department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the Department, under the Acid Rain Program. In the event of such communication, the Department is not required to stay any submission or the effect of any action or inaction under the Acid Rain Program.~~

~~b. The Department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.~~

~~72.26-72.29 Reserved.~~

~~SUBPART C ACID RAIN PERMIT APPLICATIONS.~~

~~72.30 Requirement to Apply.~~

~~a. Duty to apply. The designated representative of any source with an affected unit shall submit a complete Acid Rain permit application by the applicable deadline in paragraphs (b) and (c) of this section, and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its Acid Rain Program requirements.~~

~~b. Deadlines.~~

~~—— (1) For any source with an existing unit described under 61-62.72.1 section III(a)(2), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department on or before January 1, 1996.~~

~~—— (2) For any source with a new unit described under 61-62.72.1 section III(a)(3)(i), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.~~

~~—— (3) For any source with a unit described under 61-62.72.1 section III(a)(3)(iii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.~~

~~—— (4) For any source with a unit described under 61-62.72.1 section III(a)(3)(iv), the designated~~

~~representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe hrs actual electric output (on a gross basis).~~

~~—(5) For any source with a unit described under 61-62.72.1 section III(a)(3)(v), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.~~

~~—(6) For any source with a unit described under 61-62.72.1 section III(a)(3)(vi), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.~~

~~—(7) For any source with a unit described under 61-62.72.1 section III(a)(3)(vii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).~~

~~e. Duty to Reapply. The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months or such longer time as may be approved under 40 CFR part 70 prior to the expiration of an existing Acid Rain permit governing the unit.~~

~~d. The original and three copies of all permit applications shall be submitted to the Department.~~

~~e. Where two or more affected units are located at a source, the Department may, in its sole discretion, allow the designated representative of the source to submit, under paragraph (a) and (e) of this section, two or more Acid Rain permit applications covering the units at the source, provided that each affected unit is covered by one and only one such application.~~

72.31 Information Requirements for Acid Rain Permit Applications.

~~—A complete Acid Rain permit application shall be submitted on a form approved by the Department, which includes the following elements:~~

~~a. Identification of the affected source for which the permit application is submitted;~~

~~b. Identification of each affected unit at the source for which the permit application is submitted;~~

~~c. A complete compliance plan for each unit, in accordance with 61-62.72.4;~~

~~d. The standard requirements under 61-62.72.1 section VI; and~~

~~e. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.~~

72.32 Permit Application Shield and Binding Effect of Permit Application.

~~a. Once a designated representative submits a timely and complete Acid Rain permit application, the~~

~~owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an Acid Rain permit under 61-62.72.1 section VI(a)(2) and 61-62.72.3 section I(a); provided that any delay in issuing an Acid Rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Department, necessary to issue a permit.~~

~~b. Prior to the earlier of the date on which an Acid Rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.~~

~~c. A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to petition for review.~~

~~72.33-72.39 Reserved~~

~~SUBPART D—ACID RAIN COMPLIANCE PLAN AND COMPLIANCE OPTIONS.~~

~~72.40 General.~~

~~a. For each affected unit included in an Acid Rain permit application, a complete compliance plan shall include:~~

~~—— (1) For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(e)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with 61-62.72.4, one or more of the Acid Rain compliance options.~~

~~—— (2) For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established in 40 CFR Part 76 Amended as published at 61 Federal Register 67162 through 67164, December 19, 1996 or shall specify one or more Acid Rain compliance options, in accordance with section 407 of the Act and 40 CFR Part 76 Amended as published at 61 Federal Register 67162 through 67164, December 19, 1996~~

~~b. The compliance plan may include a multi-unit compliance option under 61-62.72.4 section II or section 407 of the Act or regulations implementing section 407.~~

~~—— (1) A plan for a compliance option that includes units at more than one affected source shall be complete only if:~~

~~—— (i) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and~~

~~—— (ii) A complete permit application is submitted covering each unit governed by such plan.~~

~~—— (2) Department's approval of a plan under paragraph (b)(1) of this section that includes units in more than one State shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.~~

~~e. Conditional Approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with 61-62.72.4, any Acid Rain compliance option for conditional approval; provided that an Acid Rain compliance option under section 407 of the Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.~~

~~—(1) To activate a conditionally approved Acid Rain compliance option, the designated representative shall notify the Department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 61-62.72.4 section II and 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in paragraph (b)(1) of this section, the designated representative of each source governed by the plan shall sign and certify the notification.~~

~~—(2) The notification under paragraph (c)(1) of this section shall specify the first calendar year and the last calendar year for which the conditionally approved Acid Rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.~~

~~—(3) Upon submission of a notification meeting the requirements of paragraphs (c) (1) and (2) of this section, the conditionally approved Acid Rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.~~

~~—(4) A notification meeting the requirements of paragraphs (c) (1) and (2) of this section will revise the unit's permit in accordance with 61-62.72.7 section IV (administrative permit amendment).~~

~~d. Termination of Compliance Option.~~

~~—(1) The designated representative for a unit may terminate an Acid Rain compliance option by notifying the Department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 61-62.72.4 section II and 40 CFR Part 76. If the compliance option includes a plan described in paragraph (b)(1) of this section, the designated representative for each source governed by the plan shall sign and certify the notification.~~

~~—(2) The notification under paragraph (d)(1) of this section shall specify the calendar year for which the termination will take effect.~~

~~—(3) Upon submission of a notification meeting the requirements of paragraphs (d) (1) and (2) of this section, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the Acid Rain compliance option to be terminated.~~

~~—(4) A notification meeting the requirements of paragraphs (d) (1) and (2) of this section will revise the unit's permit in accordance with 61-62.72.7 section IV (administrative permit amendment).~~

~~72.41-72.43 Reserved.~~

~~72.44 Repowering Extensions.~~

~~a. Applicability.~~

~~— (1) This section shall apply to the designated representative of:~~

~~— (i) Any existing affected unit that is a coal fired unit and has a 1985 actual SO₂ emissions rate equal to or greater than 1.2 lbs/mmBtu; or~~

~~— (ii) Any new unit that will be a replacement unit, as provided in paragraph (b)(2) of this section, for a unit meeting the requirements of paragraph (a)(1)(i) of this section; or~~

~~— (iii) Any oil and/or gas fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.~~

~~— (2) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.~~

~~b. The designated representative of any unit meeting the requirements of paragraph (a)(1)(i) of this section may include in the unit's Acid Rain permit application a repowering extension plan that includes a demonstration that:~~

~~— (1) The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or~~

~~— (2) The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.~~

~~c. In order to apply for a repowering extension, the designated representative of a unit under paragraph (a) of this section shall:~~

~~— (1) Submit to the Department, by January 1, 1996, a complete repowering extension plan;~~

~~— (2) Submit to the Administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the Department; and~~

~~— (3) If the repowering extension plan is submitted for conditional approval, submit to the Department by December 31, 1997, a notification to activate the plan in accordance with 61-62.72.4 section I(c).~~

~~d. Contents of Repowering Extension Plan. A complete repowering extension plan shall include the following elements:~~

~~— (1) Identification of the existing unit governed by the plan.~~

~~— (2) The unit's federally approved State Implementation Plan sulfur dioxide emissions limitation.~~

~~— (3) The unit's 1995 actual SO₂ emissions rate, or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the Department by January 30, 1996.~~

~~— (4) A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following~~

milestones:

- ~~———— (i) Completion of design engineering;~~
- ~~———— (ii) For a plan under paragraph (b)(1) of this section, removal of the existing unit from operation to install the qualified repowering technology;~~
- ~~———— (iii) Commencement of construction;~~
- ~~———— (iv) Completion of construction;~~
- ~~———— (v) Start-up testing;~~
- ~~———— (vi) For a plan under paragraph (b)(2) of this section, shutdown of the existing unit; and~~
- ~~———— (vii) Commencement of commercial operation of the repowering technology.~~
- ~~———— (5) For a plan under paragraph (b)(2) of this section:~~
 - ~~———— (i) Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.~~
 - ~~———— (ii) Certification that the new unit will replace the existing unit.~~
 - ~~———— (iii) Certification that the new unit has the same designated representative as the existing unit.~~
 - ~~———— (iv) Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.~~
- ~~———— (6) The special provisions of paragraph (g) of this section.~~

~~e. Department's Action on Repowering Extension Plan.~~

- ~~———— (1) The Department will not approve a repowering extension plan until the Administrator makes a conditional determination that the technology is a qualified repowering technology, unless the Department approves such plan subject to the conditional determination of the Administrator.~~
- ~~———— (2) Permit Issuance.~~
 - ~~———— (i) Upon a conditional determination by the Administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the Department that such plan meets the requirements of this section, the Department will issue the Acid Rain portion of the operating permit including:~~
 - ~~———— (A) The approved repowering extension plan; and~~
 - ~~———— (B) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.~~
 - ~~———— (ii) Except as otherwise provided in paragraph (f) of this section, the repowering extension shall~~

~~be in effect starting January 1, 2000 and ending on the day before the date (specified in the Acid Rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; provided that the repowering extension shall end no later than December 31, 2003.~~

~~—(iii) The portion of the operating permit specifying the repowering extension and other requirements under paragraph (e)(2)(i) of this section shall be subject to the Administrator's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.~~

~~—(3) Allowance Allocation. Allowances will be allocated in accordance with 40 CFR 72.44(f)(3) and (g).~~

~~f. Failed Repowering Projects.~~

~~—(1) (i) If, at any time before the end of the repowering extension under paragraph (e)(2)(ii) of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 61-62.72.8 section II(d) that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the Department a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the Administrator, the unit shall not be deemed in violation of the Act because of such a termination and the Department will revise the operating permit in accordance with paragraph (f)(1)(ii) of this section.~~

~~—(ii) Regardless of whether notification under paragraph (f)(1)(i) of this section is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 61-62.72.8 section II(d).~~

~~—(2) The designated representative of a unit governed by an approved repowering extension plan may submit to the Department a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits the unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the Administrator,~~

~~—(i) The unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations;~~

~~—(ii) The Department will revise the Acid Rain portion of the operating permit in accordance with paragraphs (f)(2)(ii)(iii) and nothing(iv) of this section;~~

~~—(iii) The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and~~

~~—(iv) The repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003.~~

~~g. Special Provisions.~~

~~—— (1) Emissions Limitations.~~

~~—— (i) Sulfur Dioxide. Allowances allocated during the repowering extension under paragraphs (e)(2)(3) and (f) of this section to a unit governed by an approved repowering extension plan shall not be transferred to any Allowance Tracking System account other than the unit accounts of other units at the same source as that unit.~~

~~—— (ii) Nitrogen Oxides. Any existing unit governed by an approved repowering extension plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with section 407 of the Act and 40 CFR Part 76 Amended as published at 61 Federal Register 67162 through 67164, December 19, 1996 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.~~

~~—— (iii) No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under section 111(j) of the Act.~~

~~—— (iv) No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under section 111 of the Act.~~

~~—— (2) Reporting Requirements. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 61-62.72.8 section II.~~

~~—— (3) Liability.~~

~~—— (i) The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan,~~

~~—— (ii) The units governed by the plan under paragraph (b)(2) of this section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.~~

~~—— (4) Terminations. Except as provided in paragraph (f) of this section, a repowering extension plan shall not be terminated after December 31, 1999.~~

~~**72.45-72.49 Reserved**~~

~~**SUBPART E ACID RAIN PERMIT CONTENTS.**~~

~~**72.50 General.**~~

~~a. Each Acid Rain permit (including any draft or proposed Acid Rain permit) will contain the following elements:~~

~~—— (1) All elements required for a complete Acid Rain permit application under 61-62.72.3 section II, as approved or adjusted by the Department;~~

~~—— (2) The applicable Acid Rain emissions limitation for sulfur dioxide; and~~

~~—— (3) The applicable Acid Rain emissions limitation for nitrogen oxides.~~

b. Each Acid Rain permit is deemed to incorporate the definitions of terms under 61-62.72.1 section I.

~~72.51 Permit Shield.~~

~~— Each affected unit operated in accordance with the Acid Rain permit that governs the unit and that was issued in compliance with title IV of the Act, as provided in 61-62.72.1 through 61-62.72.8, 40 CFR parts 72, 73, 75, 76, 77, and 78 shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in 61-62.72.1 section VI(g)(6).~~

~~72.52-72.59 Reserved~~

~~SUBPART F—ACID RAIN PERMIT ISSUANCE PROCEDURES.~~

~~72.60 General.~~

~~— The Department will issue or deny all Acid Rain permits in accordance with the permitting authority's permit regulations adopted under 40 CFR part 70 61-62.70, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 61-62.72.6 and 61-62.72.7.~~

~~72.61 Completeness.~~

~~— The Department will submit a written notice of application completeness to the Administrator within 10 working days following a determination by the Department that the Acid Rain permit application is complete.~~

~~72.62-72.63 Reserved~~

~~72.64 Statement of Basis.~~

a. ~~The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the Department relied in issuing or denying the draft permit.~~

b. ~~The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.~~

c. ~~The Department will submit to the Administrator a copy of the draft Acid Rain permit and the statement of basis and all other relevant portions of the operating permit that may affect the draft Acid Rain permit.~~

~~72.65-72.68 Reserved~~

~~72.69 Issuance of Acid Rain Permits.~~

a. ~~After the close of the public comment period, the Department will issue or deny an Acid Rain permit. The Department will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on the air pollution control agencies of affected States and any interested person. The Department will also give notice in the *State Register*.~~

~~b. The Department will submit the proposed Acid Rain permit or denial of a proposed Acid Rain permit to the Administrator in accordance with the permitting authority's permit regulations adopted under 40 CFR part 70.8(a) 61-62.70.8(a), the provisions of which shall be treated as applying to the issuance or denial of a proposed Acid Rain permit.~~

~~c. (1) Following the Administrator's review of the proposed Acid Rain permit or denial of a proposed Acid Rain permit, the Department or, under the permitting authority's permit regulations adopted under 40 CFR part 70.8(c) 61-62.70.8(c) (treated as applying to the issuance or denial of an Acid Rain permit), the Administrator will incorporate any required changes and issue or deny the Acid Rain permit in accordance with 61-62.72.5.~~

~~— (2) No Acid Rain permit (including a draft or proposed permit) shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with subpart B of 40 CFR part 72.~~

~~d. Permit issuance deadline and effective date.~~

~~— (1) On or before December 31, 1997, the Department will issue an Acid Rain permit to each affected source whose designated representative submitted a timely and complete Acid Rain permit application by January 1, 1996 in accordance with 61-62.72.2 section I and meets the requirements of 61-62.72.6 and the permitting authority's permit regulations adopted under 40 CFR part 70 61-62.70.~~

~~— (2) Nitrogen Oxides. Not later than January 1, 1999, the Department will reopen the Acid Rain permit to add the Acid Rain Program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with 61-62.72.2 section I. Such reopening shall not affect the term of the Acid Rain portion of an operating permit.~~

~~— (3) Each Acid Rain permit issued in accordance with paragraph (d)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under 61-62.72.1 section III(a)(3), the deadline for monitor certification under 40 CFR part 75.~~

~~— (4) Each Acid Rain permit shall have a term of 5 years commencing on its effective date.~~

~~— (5) An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.~~

~~e. (1) Each Acid Rain permit shall contain all applicable Acid Rain requirements, shall be a portion of the operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.~~

~~— (2) Invalidation of the Acid Rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the Acid Rain portion of the permit.~~

~~72.70 Acid Rain Permit Appeal Procedures.~~

~~a. Appeals of the Acid Rain portion of an operating permit issued by the Department that do not challenge or involve decisions or actions of the Administrator under 40 CFR part 72, 73, 75, 77 and 78 and sections~~

~~407 and 410 of the Act and regulations implementing sections 407 and 410 shall be conducted according to the procedures of the South Carolina Administrative Procedures Act, S.C. Regulation 61-72, and applicable rules of the Administrative Law Division. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under 40 CFR part 78 and section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.~~

~~b. The time for petition for review shall be in accordance with time limits as set forth in South Carolina Regulation 61-72, but in no case shall be allowed more than 90 days following issuance of the Acid Rain portion that is subject to petition for review.~~

~~c. The Administrator may intervene as a matter of right in any State administrative appeal of an Acid Rain permit or denial of an Acid Rain permit.~~

~~d. No administrative appeal concerning an Acid Rain requirement shall result in a stay of the following requirements:~~

~~— (1) the allowance allocations for any year during which the appeal proceeding is pending or is being conducted;~~

~~— (2) any standard requirement under 61-62.72.1 section VI;~~

~~— (3) the emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75;~~

~~— (4) uncontested provisions of the decision on appeal; and~~

~~— (5) the terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.~~

~~e. The Department will serve written notice on the Administrator of any State administrative or judicial appeal concerning an Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.~~

~~f. The Department will serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the Acid Rain permit or revoke the permit for cause in accordance with the permitting authority's permit regulations adopted under 40 CFR part 70.8 61-62.70.8.~~

~~SUBPART G — RESERVED~~

~~72.71-72.79 Reserved~~

~~SUBPART H — PERMIT REVISIONS.~~

~~72.80 General.~~

~~a. 61-62.72.7 shall govern revisions to any Acid Rain permit and to the Acid Rain portion of any Operating Permit issued by the Department.~~

~~b. A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the Acid Rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.~~

~~c. The terms of the Acid Rain permit shall apply while the permit revision is pending.~~

~~d. Any determination or interpretation by State (including the Department or a State court) modifying or voiding any Acid Rain permit provision shall be subject to review by the Administrator in accordance with the permitting authority's permit regulations adopted under 40 CFR part 70.8(e) 61-62.70.8(e) as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 61-62.72.7 section IV.~~

~~e. The standard requirements of 61-62.72.1 section VI shall not be modified or voided by a permit revision.~~

~~f. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Subpart D of this regulation and 40 CFR parts 74 and 76.~~

~~g. Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the permitting authority.~~

72.81 Permit Modifications.

~~a. (1) Permit modifications shall follow the permit issuance requirements of 61-62.72.6 and the permitting authority's permit regulations adopted under 40 CFR part 70.7(e)(4)(ii) 61-62.70.7(e)(4)(ii).~~

~~— (2) For purposes of applying paragraph (a)(1) of this section, a permit modification shall be treated as an Acid Rain permit application, to the extent consistent with 61-62.72.7.~~

~~b. The following permit revisions are permit modifications:~~

~~— (1) Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;~~

~~— (2) Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period;~~

~~— (3) Determinations concerning failed repowering projects under S 402(f)(1)(i) 61-62.72.4 section (f)(1)(i) and (2); and~~

~~— (4) At the option of the designated representative submitting the permit revision, the permit revisions listed in 61-62.72.7 section III(b).~~

72.82 Fast-track Modifications.

~~a. Fast track modifications shall follow the following procedures:~~

~~— (1) The designated representative shall serve a copy of the fast track modification on the Administrator, the Department, and any person entitled to a written notice under the permitting authority's permit regulations adopted under 40 CFR 70.7(h) and 70.8(b). Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.~~

~~— (2) The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast track modification. Comments shall be submitted in writing to the Department and to the designated representative.~~

~~— (3) The designated representative shall submit the fast track modification to the Department on or before commencement of the public comment period.~~

~~— (4) Within 30 days of the close of the public comment period, the Department will consider the fast track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast track modification shall be subject to the same provisions for review by the Department as are applicable to a permit modification under 40 CFR 72.81 and 61-62.72.81.~~

b. The following permit revisions are, at the option of the designated representative submitting the permit revision, ~~either fast track modifications under this section or permit modifications under 61-62.72.7 section II:~~

~~— (1) Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;~~

~~— (2) Addition of a nitrogen oxides averaging plan to a permit; and~~

~~— (3) Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.~~

~~72.83 Administrative Permit Amendment.~~

a. ~~Administrative amendments shall follow the procedures set forth at the permitting authority's permit regulations adopted under 40 CFR 61-62.70.7(d)(3). The Department will submit the revised portion of the permit to the Administrator within 10 working days after the date of final action on the request for an administrative amendment.~~

b. The following permit revisions are administrative amendments:

~~— (1) Activation of a compliance option conditionally approved by the Department; provided that all requirements for activation under 61-62.72.4 section I(c) and 61.62.72.4 section II are met;~~

~~— (2) Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the Administrator in accordance with subpart B of 40 CFR part 72;~~

~~— (3) Correction of typographical errors;~~

~~— (4) Changes in names, addresses, or telephone or facsimile numbers;~~

~~—(5) Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the Administrator in accordance with subpart B of 40 CFR part 72;~~

~~—(6) Termination of a compliance option in the permit; provided that all requirements for termination under 61-62.72.4 section I(d) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;~~

~~—(7) Changes in the date, specified in a new unit's Acid Rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 61-62.72.1 section VI;~~

~~—(8) The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of 40 CFR Part 76 Amended as published at 61 Federal Register 67162 through 67164, December 19, 1996 are met; and~~

~~—(9) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(b)(1) through (8) of this section.~~

~~72.84 Automatic Permit Amendment.~~

~~—The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's Acid Rain permit by operation of law without any further review:~~

~~a. Upon recordation by the Administrator under 40 CFR part 73, all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and~~

~~b. Incorporation of an offset plan that has been approved by the Administrator under 40 CFR part 77.~~

~~72.85 Permit Reopenings.~~

~~a. The Department shall reopen an Acid Rain permit for cause, whenever:~~

~~—1. Any additional requirement under the Acid Rain Program becomes applicable to any affected unit governed by the permit;~~

~~—2. The Department determines that the permit contains a material mistake or that an inaccurate statement was made in establishing the emissions standards or other terms or conditions of the permit, unless the mistake or statement is corrected in accordance with section 72.83 of this Standard; or~~

~~—3. The permitting authority determines that the permit must be revised or revoked to assure compliance with Acid Rain Program requirements.~~

~~b. In reopening an Acid Rain permit for cause, the Department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of 61-62.72.5 and 61-62.72.6.~~

~~c. Any reopening of an Acid Rain permit shall not affect the term of the permit.~~

~~72.86-72.89 Reserved~~

~~SUBPART I—COMPLIANCE CERTIFICATION.~~

~~72.90 Annual Compliance Certification Report.~~

~~a. Applicability and Deadline. For each calendar year in which a unit is subject to the Acid Rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the Administrator and to the Department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.~~

~~b. The submission of complete compliance certifications in accordance with paragraph (a) of this section and 40 CFR part 75 shall be deemed to satisfy the requirement to submit compliance certifications under the regulations adopted by the Permitting Authority to implement 40 CFR 61.62.70.6(c)(5)(iii) with regard to the Acid Rain portion of the source's operating permit.~~

~~72.91-72.93 Reserved.~~

~~72.94 Units with Repowering Extension Plans.~~

~~a. Design and Engineering and Contract Requirements. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the Administrator and the Department:~~

~~—— (1) Satisfactory documentation of a preliminary design and engineering effort.~~

~~—— (2) A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the Administrator under 40 CFR 72.44(d)(3).~~

~~—— (3) The letter agreement under paragraph (a)(2) of this section shall be signed and dated by each party and specify:~~

~~———— (i) The parties to the contract;~~

~~———— (ii) The date each party executed the contract;~~

~~———— (iii) The unit to which the contract applies;~~

~~———— (iv) A brief list identifying each provision of the contract;~~

~~———— (v) Any dates to which the parties agree, including construction completion date;~~

~~———— (vi) The total dollar amount of the contract; and~~

~~———— (vii) A statement that a copy of the contract is on site at the source and will be submitted upon written request of the Administrator or the Department.~~

~~b. Removal From Operation to Repower. The designated representative of a unit governed by an approved repowering plan shall notify the Administrator and the Department in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.~~

~~e. Commencement of Operation. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the Administrator and the Department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR part 75.~~

~~d. Decision to Terminate. If at any time before the end of the repowering extension and before completion of construction and start up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the Administrator and the Department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.~~

Regulation 61-62.96, Nitrogen Oxides (NO_x) Budget Trading Program, shall be revised as follows:

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.96
NITROGEN OXIDES (NO_x) AND SULFUR DIOXIDE (SO₂) BUDGET TRADING PROGRAM
GENERAL PROVISIONS**

The provisions of 61-62.96, Subparts AAAA through IIII, supersede the provisions of 61-62.96, “Nitrogen Oxides (NO_x) Budget Trading Program,” Subparts A through I, in accordance with the following schedule:

For control periods 2009 and beyond, the provisions of 61-62.96, Subparts A through I, are repealed effective January 1 April 30, 2009. Subparts A through I will be considered “Reserved” thereafter.

(b) The provisions of 61-62.96, Subparts AAAA through IIII, become effective on January 1, 2009.

~~NITROGEN OXIDES (NO_x) BUDGET TRADING PROGRAM~~

~~SUBPART A – NITROGEN OXIDES (NO_x) BUDGET TRADING PROGRAM GENERAL PROVISIONS~~

~~Section 96.1 – Purpose.~~

~~— This regulation establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this regulation as a matter of State and Federal law. The State of South Carolina authorizes the EPA to assist the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the EPA in such requirements.~~

~~Section 96.2 – Definitions.~~

—The terms used in this regulation shall have the meanings set forth in this section as follows:

- (a) ~~“Account certificate of representation” means the completed and signed submission required by subpart B of this regulation for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.~~
- (b) ~~“Account number” means the identification number given by the EPA to each NO_x Allowance Tracking System account.~~
- (c) ~~“Acid Rain emissions limitation” means, as defined in South Carolina Regulation 61-62.72.2, Air Pollution Control Regulations and Standards, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA.~~
- (d) ~~“Allocate” or “allocation” means the determination by the Department or the EPA of the number of NO_x allowances to be credited to a NO_x Budget unit or an allocation set aside.~~
- (e) ~~“Automated data acquisition and handling system” or “DAHS” means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this regulation, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this regulation.~~
- (f) ~~“Boiler” means an enclosed fossil or other fuel fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~
- (g) ~~“CAA” means the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).~~
- (h) ~~“Combined cycle system” means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.~~
- (i) ~~“Combustion turbine” means an enclosed fossil or other fuel fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.~~
- (j) ~~“Commence commercial operation” means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in Section 96.5, for a unit that is a NO_x Budget unit under Section 96.4 on the date the unit commences commercial operation, such date shall remain the unit’s date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Section 96.5 or subpart I of this regulation, for a unit that is not a NO_x Budget unit under Section 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under Section 96.4 shall be the unit’s date of commencement of commercial operation.~~
- (k) ~~“Commence operation” means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start up of a unit’s combustion chamber. Except as provided in Section~~

~~96.5, for a unit that is a NO_x Budget unit under Section 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Section 96.5 or subpart I of this regulation, for a unit that is not a NO_x Budget unit under Section 96.4 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under Section 96.4 shall be the unit's date of commencement of operation.~~

~~(l) "Common stack" means a single flue through which emissions from two or more units are exhausted.~~

~~(m) "Compliance certification" means a submission to the Department that is required under subpart D of this regulation to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this regulation and that is signed by the NO_x authorized account representative in accordance with subpart B of this regulation.~~

~~(n) "Compliance account" means a NO_x Allowance Tracking System account, established by the EPA for a NO_x Budget unit under subpart F of this regulation, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.~~

~~(o) "Continuous emission monitoring system" or "CEMS" means the equipment required under subpart H of this regulation to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR part 75, in a continuous emission monitoring system:~~

~~—— (1) Flow monitor;~~

~~—— (2) Nitrogen oxides pollutant concentration monitors;~~

~~—— (3) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this regulation;~~

~~—— (4) A continuous moisture monitor when such monitoring is required by subpart H of this regulation; and~~

~~—— (5) An automated data acquisition and handling system.~~

~~(p) "Control period" means for the year 2004, the period beginning on May 31 and ending on September 30 of the same year, inclusive. Thereafter, control period shall mean the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.~~

~~(q) "Department" means the South Carolina Department of Health and Environmental Control.~~

~~(r) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the EPA by the NO_x authorized account representative and as determined by the EPA in accordance with subpart H of this regulation.~~

~~(s) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.~~

~~(t) "EPA" means the United States Environmental Protection Agency.~~

~~(u) “Excepted monitoring system” means a monitoring system that follows the procedures and requirements of 40 CFR part 75 section 75.19 or of appendix D or E of 40 CFR part 75 for approved exceptions to the use of continuous monitoring systems.~~

~~(v) “Excess emissions” means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.~~

~~(w) “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

~~(x) “Fossil fuel-fired” means, with regard to a unit:~~

~~—— (1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had not heat input in 1995, during the last year of operation of the unit prior to 1995;~~

~~—— (2) For units that commenced operation on or after January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year.~~

~~—— (3) Notwithstanding the definition set forth in 96.2(x)(1) above, a unit shall be deemed fossil fuel-fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.~~

~~(y) “General account” means a NO_x Allowance Tracking System account, established under subpart F of this regulation, that is not a compliance account or an overdraft account.~~

~~(z) “Generator” means a device that produces electricity.~~

~~(aa) “Heat input” means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the EPA by the NO_x authorized account representative and as determined by the EPA in accordance with subpart H of this regulation, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~(bb) “Life of the unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

~~—— (1) For the life of the unit;~~

~~—— (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~—— (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~(ee) “Low mass emissions unit” means an affected unit that is a gas fired or oil fired unit, burns only natural gas or fuel oil and qualifies under 40 CFR part 75 section 75.19.~~

~~(dd) “Maximum design heat input” means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.~~

~~(ee) “Maximum potential hourly heat input” means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR part 75 to report heat input, this value should be calculated, in accordance with 40 CFR part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).~~

~~(ff) “Maximum potential NO_x emission rate” means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR part 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.~~

~~(gg) “Maximum rated hourly heat input” means a unit specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer’s maximum rated hourly heat input or the highest observed hourly heat input.~~

~~(hh) “Monitoring system” means any monitoring system that meets the requirements of subpart H of this regulation, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.~~

~~(ii) “Most stringent State or Federal NO_x emissions limitation” means, with regard to a NO_x Budget option source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

~~(jj) “Nameplate capacity” means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.~~

~~(kk) “Non Title V permit” means a federally enforceable permit administered by the Department pursuant to the CAA and regulatory authority under the CAA, other than Title V of the CAA and South Carolina Regulation 61-62.70, *Title V Operating Permit Program*.~~

~~(ll) “NO_x allowance” means an authorization by the Department under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.~~

~~(mm) “NO_x allowance deduction” or “deduct NO_x allowances” means the permanent withdrawal of NO_x allowances by the EPA from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with subpart H of this regulation, or for any other allowance surrender obligation under this regulation.~~

~~(nn) “NO_x allowances held” or “hold NO_x allowances” means the NO_x allowances recorded by the EPA, or submitted to the EPA for recordation, in accordance with subparts F and G of this regulation, in a NO_x Allowance Tracking System account.~~

~~(oo) “NO_x Allowance Tracking System” means the system by which the EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.~~

~~(pp) “NO_x Allowance Tracking System account” means an account in the NO_x Allowance Tracking System established by the EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.~~

~~(qq) “NO_x allowance transfer deadline” means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.~~

~~(rr) “NO_x authorized account representative” means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with subpart B of this regulation, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this regulation, to transfer or otherwise dispose of NO_x allowances held in the general account.~~

~~(ss) “NO_x Budget emissions limitation” means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under Section 96.54(a) and (b), adjusted by any deductions of such NO_x allowances to account for actual utilization under Section 96.42(e) for the control period or to account for excess emissions for a prior control period under Section 96.54(d) or to account for withdrawal from the NO_x Budget Program, or for a change in regulatory status, for a NO_x Budget opt in source under Section 96.86 or Section 96.87.~~

~~(tt) “NO_x Budget opt in permit” means a NO_x Budget permit covering a NO_x Budget opt in source.~~

~~(uu) “NO_x Budget opt in source” means a unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt in permit has been issued and is in effect under subpart I of this regulation.~~

~~(vv) “NO_x Budget permit” means the legally binding and federally enforceable written document, or portion of such document, issued by the Department under this regulation, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.~~

~~(ww) “NO_x Budget source” means a source that includes one or more NO_x Budget units.~~

~~(xx) “NO_x Budget Trading Program” means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this regulation and pursuant to 40 CFR part 51 section 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

~~(yy) “NO_x Budget unit” means a unit that is subject to the NO_x Budget Trading Program emissions~~

~~limitation under Section 96.4 or Section 96.80.~~

~~(zz) “Operating” means, with regard to a unit under Sections 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under Section 96.83(a).~~

~~(aaa) “Operator” means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt in permit under Section 96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~(bbb) “Opt in” means to be elected to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt in permit under subpart I of this regulation.~~

~~(ccc) “Overdraft account” means the NO_x Allowance Tracking System account, established by the EPA under subpart F of this regulation, for each NO_x Budget source where there are two or more NO_x Budget units.~~

~~(ddd) “Owner” means any of the following persons:~~

~~— (1) Any holder of any portion of the legal or equitable Title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt in permit under Section 96.83 is submitted and not denied or withdrawn; or~~

~~— (2) Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt in permit under Section 96.83 is submitted and not denied or withdrawn; or~~

~~— (3) Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt in permit under Section 96.83 is submitted and not denied or withdrawn under a life of the unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt in permit under Section 96.83 is submitted and not denied or withdrawn; or~~

~~— (4) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.~~

~~(eee) “Ozone season” means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.~~

~~(fff) “Permitting authority” means the South Carolina Department of Health and Environmental Control which is authorized by the EPA to issue or revise permits to meet the requirements of the NO_x Budget Trading Program in accordance with subpart C of this regulation.~~

~~(ggg) “Receive or receipt of” means, when referring to the Department or the EPA, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the EPA in the regular course of~~

~~business.~~

~~(hhh) “Recordation, record, or recorded” means, with regard to NO_x allowances, the movement of NO_x allowances by the EPA from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.~~

~~(iii) “Reference method” means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR part 60.~~

~~(jjj) “Serial number” means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the EPA, under Section 96.53(e).~~

~~(kkk) “Source” means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(e) of the CAA, a “source”, including a “source” with multiple units, shall be considered a single “facility.”~~

~~(lll) “State” means the State of South Carolina.~~

~~(mmm) “State trading program budget” means the total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.~~

~~(nnn) “Submit or serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

~~—(1) In person;~~

~~—(2) By United States Postal Service; or~~

~~—(3) By other means of dispatch or transmission and delivery. Compliance with any “submission,” “service,” or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

~~(ooo) “Title V operating permit” means a permit issued under Title V of the CAA and 40 CFR part 70 or 40 CFR part 71, and South Carolina Regulation 61-62.70, *Title V Operating Permit Program*.~~

~~(ppp) “Title V operating permit regulations” means the regulations that the EPA has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR part 70 or 71.~~

~~(qqq) “Ton or tonnage” means any “short ton” (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this regulation, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.~~

~~(rrr) “Unit” means a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system.~~

~~(sss) “Unit load” means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:~~

~~— (1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or~~

~~— (2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.~~

~~(ttt) “Unit operating day” means a calendar day in which a unit combusts any fuel.~~

~~(uuu) “Unit operating hour” or “hour of unit operation” means any hour (or fraction of an hour) during which a unit combusts any fuel.~~

~~(vvv) “Utilization” means the heat input (expressed in mmBtu/time) for a unit. The unit’s total heat input for the control period in each year will be determined in accordance with 40 CFR part 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.~~

~~Section 96.3—Measurements, Abbreviations, and Acronyms.~~

~~— Measurements, abbreviations, and acronyms used in this regulation are defined as follows:~~

~~Btu—British thermal unit.~~

~~hr—hour.~~

~~Kwh—kilowatt hour.~~

~~lb—pounds.~~

~~mmBtu—million Btu.~~

~~MWe—megawatt electrical.~~

~~ton—2000 pounds~~

~~CO₂—carbon dioxide.~~

~~NO_x—nitrogen oxides.~~

~~O₂—oxygen.~~

~~Section 96.4—Applicability.~~

~~(a) The following units shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this regulation:~~

~~— (1) (i) For units that commenced operation before January 1, 1999, a unit serving a generator that has a nameplate capacity greater than 25 MWe and, except for a unit that has a SIC code of 4911 or 4931, produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.~~

~~— (ii) For units that commenced operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.~~

~~— (2) (i) For units that commenced operation before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator that has a nameplate capacity greater than 25 MWe if any such generator produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.~~

~~—————(ii) For units that commenced operation on or after January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr that:~~

~~—————(A) At no time served a generator producing electricity for sale; or~~

~~—————(B) At any time served a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.~~

~~(b)(1) Notwithstanding paragraph (a) of this section, a unit under paragraph (a)(1) or (a)(2) of this section that has a federally enforceable permit restricting the unit to the combustion of only natural gas or fuel oil and includes a NO_x emission limitation restricting NO_x emissions during a control period to 25 tons or less and that includes the special provisions in paragraph (b)(4) of this section shall be exempt from the requirements of the NO_x Budget Trading Program, except for the provisions of this paragraph, Section 96.2, Section 96.3, Section 96.4(a), Section 96.7, and subparts E, F, and G of this regulation. The NO_x emission limitation under this paragraph (b)(1) shall restrict NO_x emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under 40 CFR part 75 section 75.19.~~

~~(2) The exemption under paragraph (b)(1) of this section shall become effective as follows:~~

~~—————(i) The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final; or~~

~~—————(ii) If the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided that such NO_x emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_x emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (b)(1) of this section shall become effective on October 1 of the year during which such NO_x emission limitation and the special provisions become final.~~

~~—————(3) The Department will provide the EPA written notice of the issuance of such permit under paragraph (b)(1) of this section for a unit under paragraph (a)(1) or (a)(2) of this section, and, upon request, a copy of the permit.~~

~~—————(4) Special provisions:~~

~~—————(i) A unit exempt under paragraph (b)(1) of this section shall comply with the restriction on unit operating hours described in paragraph (b)(1) of this section during the control period in each year.~~

~~—————(ii) The Department will allocate NO_x allowances to the unit under Section 96.41(a) through (c) and Section 96.42(a) through (c). For each control period for which the unit is allocated NO_x allowances under Section 96.41(a) through (c) and Section 96.42(a) through (c):~~

~~—————(A) The owners and operators of the unit must specify a general account, in which the EPA will record the NO_x allowances, and~~

~~————— (B) After the EPA records a NO_x allowance allocations under Section 96.41(a) through (c) and Section 96.42(a) through (c), the EPA will deduct, from the general account under paragraph (b)(4)(ii)(A) of this section, NO_x allowances that are allocated for the same or a prior control period as the NO_x allowances allocated to the unit under Section 96.41(a) through (c) and Section 96.42(a) through (c) and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under paragraph (b)(1) of this section is based. The NO_x authorized account representative shall ensure that such general account contains the NO_x allowances necessary for completion of such deduction.~~

~~————— (iii) A unit exempt under this paragraph (b) shall report hours of unit operation during the control period in each year to the Department by November 1 of that year.~~

~~————— (iv) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (b)(1) of this section shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (b)(1) of this section were met, including the restriction on fuel use and unit operating hours. The 5 year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the EPA. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours.~~

~~————— (v) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under paragraph (b)(1) of this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~

~~————— (vi) On the earlier of the following dates, a unit exempt under paragraph (b)(1) of this section shall lose its exemption:~~

~~————— (A) The date on which the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or~~

~~————— (B) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section during any control period starting in 2004.~~

~~————— (vii) A unit that loses its exemption in accordance with paragraph (b)(4)(vi) of this section shall be subject to the requirements of this part. For the purpose of applying permitting requirements under subpart C of this regulation, allocating allowances under subpart E of this regulation, and applying monitoring requirements under subpart H of this regulation, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (a)(1) of this section, commencing commercial operation on the date the unit loses its exemption.~~

~~————— (viii) A unit that is exempt under paragraph (b)(1) of this section is not eligible to be a NO_x Budget opt in unit under subpart I of this regulation.~~

~~Section 96.5 – Retired Unit Exemption.~~

~~(a) This section applies to any NO_x Budget unit, other than a NO_x Budget opt in source, that is permanently retired.~~

~~(b) (1) Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, Sections 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this regulation.~~

~~— (2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with subpart B of this regulation) shall submit a statement to the Department otherwise responsible for administering any NO_x Budget permit for the unit. A copy of the statement shall be submitted to the EPA. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.~~

~~— (3) After receipt of the notice under paragraph (b)(2) of this section, the Department will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.~~

~~(c) Special provisions:~~

~~— (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this regulation.~~

~~— (2) (i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Section 96.22 for the unit not less than 18 months (or such lesser time provided under the Department's Title V operating permits regulations for final action on a permit application) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.~~

~~— (ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non Title V permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Section 96.22 for the unit not less than 18 months (or such lesser time provided under the Department's non Title V permits regulations for final action on a permit application) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.~~

~~— (3) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~

~~— (4) A unit that is exempt under this section is not eligible to be a NO_x Budget opt-in source under subpart I of this regulation.~~

~~— (5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5 year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the EPA. The owners and operators bear the burden of proof that the unit is permanently retired.~~

~~— (6) Loss of exemption:~~

~~———— (i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:~~

~~———— (A) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under paragraph (c)(2) of this section; or~~

~~———— (B) The date on which the NO_x authorized account representative is required under paragraph (c)(2) of this section to submit a NO_x Budget permit application.~~

~~———— (ii) For the purpose of applying monitoring requirements under subpart H of this regulation, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.~~

~~Section 96.6 Standard Requirements.~~

~~(a) Permit Requirements.~~

~~———— (1) The NO_x authorized account representative of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall:~~

~~———— (i) Submit to the Department a complete NO_x Budget permit application under Section 96.22 in accordance with the deadlines specified in Section 96.21(b) and (c);~~

~~———— (ii) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.~~

~~———— (2) The owners and operators of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall have a NO_x Budget permit issued by the Department and operate the unit in compliance with such NO_x Budget permit.~~

~~———— (3) The owners and operators of a NO_x Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x Budget permit application, and to have a NO_x Budget permit, under subpart C of this regulation for such NO_x Budget source.~~

~~(b) Monitoring requirements.~~

~~———— (1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of subpart H of this regulation.~~

~~———— (2) The emissions measurements recorded and reported in accordance with subpart H of this regulation shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under paragraph (c) of this section.~~

~~(c) Nitrogen oxides requirements.~~

~~———— (1) The owners and operators of each NO_x Budget source and each Budget unit at the source shall hold NO_x allowances available for compliance deductions under Section 96.54, as of the NO_x allowance~~

~~transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with subpart H of this regulation, plus any amount necessary to account for actual utilization under Section 96.42(e) for the control period.~~

~~—(2) Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this regulation, the CAA, and applicable State law.~~

~~—(3) A NO_x Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 31, 2004, or the date on which the unit commences operation.~~

~~—(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this regulation.~~

~~—(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NO_x allowance was allocated.~~

~~—(6) A allowance allocated by the Department under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under Section 96.5 and no provision of law shall be construed to limit the authority of the State to terminate or limit such authorization.~~

~~—(7) A NO_x allowance allocated by the Department under the NO_x Budget Trading Program does not constitute a property right.~~

~~—(8) Upon recordation by the EPA under subpart F, G, or I of this regulation, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x Budget permit of the NO_x Budget unit by operation of law without any further review.~~

~~(d) Excess emissions requirements.~~

~~—(1) The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:~~

~~—(i) Surrender the NO_x allowances required for deduction under Section 96.54(d)(1); and~~

~~—(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under Section 96.54(d)(3).~~

~~(e) Recordkeeping and Reporting Requirements.~~

~~—(1) Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department or the EPA.~~

~~—(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the~~

~~statements in the account certificate of representation, in accordance with Section 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x-authorized account representative.~~

~~————(ii) All emissions monitoring information, in accordance with subpart H of this regulation; provided that to the extent that subpart H of this regulation provides for a 3-year period for recordkeeping, the 3-year period shall apply.~~

~~————(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x-Budget Trading Program.~~

~~————(iv) Copies of all documents used to complete a NO_x-Budget permit application and any other submission under the NO_x-Budget Trading Program or to demonstrate compliance with the requirements of the NO_x-Budget Trading Program.~~

~~——(2) The NO_x-authorized account representative of a NO_x-Budget source and each NO_x-Budget unit at the source shall submit the reports and compliance certifications required under the NO_x-Budget Trading Program, including those under subparts D, H, or I of this regulation.~~

~~(f) Liability.~~

~~——(1) Any person who knowingly violates any requirement or prohibition of the NO_x-Budget Trading Program, a NO_x-Budget permit, or an exemption under Section 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.~~

~~——(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x-Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.~~

~~——(3) No permit revision shall excuse any violation of the requirements of the NO_x-Budget Trading Program that occurs prior to the date that the revision takes effect.~~

~~——(4) Each NO_x-Budget source and each NO_x-Budget unit shall meet the requirements of the NO_x-Budget Trading Program.~~

~~——(5) Any provision of the NO_x-Budget Trading Program that applies to a NO_x-Budget source (including a provision applicable to the NO_x-authorized account representative of a NO_x-Budget source) shall also apply to the owners and operators of such source and of the NO_x-Budget units at the source.~~

~~——(6) Any provision of the NO_x-Budget Trading Program that applies to a NO_x-Budget unit (including a provision applicable to the NO_x-authorized account representative of a NO_x-budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this regulation, the owners and operators and the NO_x-authorized account representative of one NO_x-Budget unit shall not be liable for any violation by any other NO_x-Budget unit of which they are not owners or operators or the NO_x-authorized account representative and that is located at a source of which they are not owners or operators or the NO_x-authorized account representative.~~

~~(g) Effect on Other Authorities. No provision of the NO_x-Budget Trading Program, a NO_x-Budget permit application, a NO_x-Budget permit, or an exemption under Section 96.5 shall be construed as exempting or~~

~~excluding the owners and operators and, to the extent applicable, the NO_x-authorized account representative of a NO_x-Budget source or NO_x-Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.~~

~~Section 96.7—Computation of Time.~~

~~(a) Unless otherwise stated, any time period scheduled, under the NO_x-Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.~~

~~(b) Unless otherwise stated, any time period scheduled, under the NO_x-Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.~~

~~(c) Unless otherwise stated, if the final day of any time period, under the NO_x-Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.~~

~~SUBPART B—NO_x-AUTHORIZED ACCOUNT REPRESENTATIVE FOR NO_x-BUDGET SOURCES~~

~~Section 96.10—Authorization and Responsibilities of the NO_x-Authorized Account Representative.~~

~~(a) Except as provided under Section 96.11, each NO_x-Budget source, including all NO_x-Budget units at the source, shall have one and only one NO_x-authorized account representative, with regard to all matters under the NO_x-Budget Trading Program concerning the source or any NO_x-Budget unit at the source.~~

~~(b) The NO_x-authorized account representative of the NO_x-Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x-Budget units at the source.~~

~~(c) Upon receipt by the EPA of a complete account certificate of representation under Section 96.13, the NO_x-authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x-Budget source represented and each NO_x-Budget unit at the source in all matters pertaining to the NO_x-Budget Trading Program, notwithstanding any agreement between the NO_x-authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x-authorized account representative by the Department, the EPA, or a court regarding the source or unit.~~

~~(d) No NO_x-Budget permit shall be issued, and no NO_x-Allowance Tracking System account shall be established for a NO_x-Budget unit at a source, until the EPA has received a complete account certificate of representation under Section 96.13 for a NO_x-authorized account representative of the source and the NO_x-Budget units at the source.~~

~~(e) (1) Each submission under the NO_x-Budget Trading Program shall be submitted, signed, and certified by the NO_x-authorized account representative for each NO_x-Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x-authorized account representative: “I am authorized to make this submission on behalf of the owners and operators of the NO_x-Budget sources or NO_x-Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are~~

to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

—(2) The Department and the EPA will accept or act on a submission made on behalf of owner or operators of a NO_x-Budget source or a NO_x-Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

~~Section 96.11—Alternate NO_x Authorized Account Representative.~~

~~(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.~~

~~(b) Upon receipt by the EPA of a complete account certificate of representation under Section 96.13, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.~~

~~(c) Except in this section and Sections 96.10(a), 96.12, 96.13, and 96.51, whenever the term “NO_x authorized account representative” is used in this regulation, the term shall be construed to include the alternate NO_x authorized account representative.~~

~~Section 96.12—Changing the NO_x Authorized Account Representative and the Alternate NO_x Authorized Account Representative; Changes in the Owners and Operators.~~

~~(a) Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the EPA of a superseding complete account certificate of representation under Section 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the EPA receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x-Budget source and the NO_x-Budget units at the source.~~

~~(b) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the EPA of a superseding complete account certificate of representation under Section 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the EPA receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x-Budget source and the NO_x-Budget units at the source.~~

~~(c) Changes in the owners and operators.~~

—(1) In the event a new owner or operator of a NO_x-Budget source or a NO_x-Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the

decisions, orders, actions, and inactions of the Department or the EPA, as if the new owner or operator were included in such list.

~~— (2) Within 30 days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.~~

~~Section 96.13—Account Certificate of Representation.~~

~~(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the EPA:~~

~~— (1) Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.~~

~~— (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.~~

~~— (3) A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.~~

~~— (4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: “I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the EPA, or a court regarding the source or unit.”~~

~~— (5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.~~

~~(b) Unless otherwise required by the Department or the EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the EPA. Neither the Department nor the EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~Section 96.14—Objections Concerning the NO_x Authorized Account Representative.~~

~~(a) Once a complete account certificate of representation under Section 96.13 has been submitted and received, the Department and the EPA will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under Section 96.13 is received by the EPA.~~

~~(b) Except as provided in Section 96.12(a) or (b), no objection or other communication submitted to the Department or the EPA concerning the authorization, or any representation, action, inaction, or~~

~~submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Department or the EPA under the NO_x Budget Trading Program.~~

~~(c) Neither the Department nor the EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.~~

~~SUBPART C—PERMITS~~

~~Section 96.20—General NO_x Budget Trading Program Permit Requirements.~~

~~(a) For each NO_x Budget source required to have a federally enforceable permit, such permit shall include a NO_x Budget permit administered by the Department.~~

~~—— (1) For NO_x Budget sources required to have a Title V operating permit, the NO_x Budget portion of the Title V permit shall be administered in accordance with the Department's Title V operating permits regulations promulgated under 40 CFR part 70 or 71, except as provided otherwise by this subpart or subpart I of this regulation. The applicable provisions of such Title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the EPA.~~

~~—— (2) For NO_x Budget sources required to have a non Title V permit, the NO_x Budget portion of the non Title V permit shall be administered in accordance with the Department's regulations promulgated to administer non Title V permits, except as provided otherwise by this subpart or subpart I of this regulation. The applicable provisions of such non Title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the EPA.~~

~~(b) Each NO_x Budget permit (including a draft or proposed NO_x Budget permit, if applicable) shall contain all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.~~

~~Section 96.21—NO_x Budget Permit Applications.~~

~~(a) Duty to apply. The NO_x authorized account representative of any NO_x Budget source required to have a federally enforceable permit shall submit to the Department a complete NO_x Budget permit application under Section 96.22 by the applicable deadline in paragraph (b) of this section.~~

~~(b) (1) For NO_x Budget sources required to have a Title V operating permit:~~

~~—— (i) For any source, with one or more NO_x Budget units under Section 96.4 that commence operation before January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under Section 96.22 covering such NO_x Budget units to the Department at least 18 months (or such lesser time provided under the Department's Title V operating permits regulations for final action on a permit application) before May 31, 2004.~~

~~—— (ii) For any source, with any NO_x Budget unit under Section 96.4 that commences operation on~~

~~or after January 1, 2000, the NO_x-authorized account representative shall submit a complete NO_x-Budget permit application under Section 96.22 covering such NO_x-Budget unit to the Department at least 18 months (or such lesser time provided under the Department's Title V operating permits regulations for final action on a permit application) before the later of May 31, 2004, or the date on which the NO_x-Budget unit commences operation.~~

~~— (2) For NO_x-Budget sources required to have a non-Title V permit:~~

~~— (i) For any source, with one or more NO_x-Budget units under Section 96.4 that commence operation before January 1, 2000, the NO_x-authorized account representative shall submit a complete NO_x-Budget permit application under Section 96.22 covering such NO_x-Budget units to the Department at least 18 months (or such lesser time provided under the Department's non-Title V permits regulations for final action on a permit application) before May 31, 2004.~~

~~— (ii) For any source, with any NO_x-Budget unit under Section 96.4 that commences operation on or after January 1, 2000, the NO_x-authorized account representative shall submit a complete NO_x-Budget permit application under Section 96.22 covering such NO_x-Budget unit to the Department at least 18 months (or such lesser time provided under the Department's non-Title V permits regulations for final action on a permit application) before the later of May 31, 2004, or the date on which the NO_x-Budget unit commences operation.~~

~~(c) Duty to Reapply:~~

~~— (1) For a NO_x-Budget source required to have a Title V operating permit, the NO_x-authorized account representative shall submit a complete NO_x-Budget permit application under Section 96.22 for the NO_x-Budget source covering the NO_x-Budget units at the source in accordance with the Department's Title V operating permits regulations addressing operating permit renewal.~~

~~— (2) For a NO_x-Budget source required to have a non-Title V permit, the NO_x-authorized account representative shall submit a complete NO_x-Budget permit application under Section 96.22 for the NO_x-Budget source covering the NO_x-Budget units at the source in accordance with the Department's non-Title V permits regulations addressing permit renewal.~~

Section 96.22—Information Requirements for NO_x-Budget Permit Applications:

~~— A complete NO_x-Budget permit application shall include the following elements concerning the NO_x-Budget source for which the application is submitted, in a format prescribed by the Department:~~

~~(a) Identification of the NO_x-Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;~~

~~(b) Identification of each NO_x-Budget unit at the NO_x-Budget source and whether it is a NO_x-Budget unit under Section 96.4 or under subpart I of this regulation;~~

~~(c) The standard requirements under Section 96.6; and~~

~~(d) For each NO_x-Budget opt-in unit at the NO_x-Budget source, the following certification statements by the NO_x-authorized account representative:~~

~~— (1) "I certify that each unit for which this permit application is submitted under subpart I of this~~

~~regulation is not a NO_x Budget unit under 40 CFR part 96.4 and is not covered by a retired unit exemption under 40 CFR part 96.5 that is in effect.”~~

~~—(2) If the application is for an initial NO_x Budget opt in permit, “I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR part 96.2.”~~

~~Section 96.23—NO_x Budget Permit Contents.~~

~~(a) Each NO_x Budget permit (including any draft or proposed NO_x Budget permit, if applicable) will contain, in a format prescribed by the Department, all elements required for a complete NO_x Budget permit application under Section 96.22.~~

~~(b) Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under Section 96.2 and, upon recordation by the EPA under subparts F, G, or I of this regulation, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.~~

~~Section 96.24—Effective Date of Initial NO_x Budget Permit.~~

~~—The initial NO_x Budget permit covering a NO_x Budget unit for which a complete NO_x Budget permit application is timely submitted under Section 96.21(b) shall become effective by the later of:~~

~~(a) May 31, 2004;~~

~~(b) May 1 of the year in which the NO_x Budget unit commences operation, if the unit commences operation on or before May 1 of that year;~~

~~(c) The date on which the NO_x Budget unit commences operation, if the unit commences operation during a control period; or~~

~~(d) May 1 of the year following the year in which the NO_x Budget unit commences operation, if the unit commences operation on or after October 1 of the year.~~

~~Section 96.25—NO_x Budget Permit Revisions.~~

~~(a) For a NO_x Budget source with a Title V operating permit, except as provided in Section 96.23(b), the Department will revise the NO_x Budget permit, as necessary, in accordance with the Department’s Title V operating permits regulations addressing permit revisions.~~

~~(b) For a NO_x Budget source with a non-Title V permit, except as provided in Section 96.23(b), the Department will revise the NO_x Budget permit, as necessary, in accordance with the Department’s non-Title V permits regulations addressing permit revisions.~~

~~SUBPART D—COMPLIANCE CERTIFICATION~~

~~Section 96.30—Compliance Certification Report.~~

~~(a) Applicability and deadline. For each control period in which one or more NO_x Budget units at a~~

~~source are subject to the NO_x Budget emissions limitation, the NO_x-authorized account representative of the source shall submit to the Department and the EPA by November 30 of that year, a compliance certification report for each source covering all such units.~~

~~(b) Contents of report. The NO_x-authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the EPA, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:~~

~~—(1) Identification of each NO_x Budget unit;~~

~~—(2) At the NO_x-authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under Section 96.54 for the control period;~~

~~—(3) At the NO_x-authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with subpart H of this regulation, the percentage of allowances that is to be deducted from each unit's compliance account under Section 96.54(e); and~~

~~—(4) The compliance certification under paragraph (c) of this section.~~

~~(c) Compliance certification. In the compliance certification report under paragraph (a) of this section, the NO_x-authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:~~

~~—(1) Whether the unit was operated in compliance with the NO_x Budget emissions limitation;~~

~~—(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with subpart H of this regulation;~~

~~—(3) Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this regulation. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;~~

~~—(4) Whether the facts that form the basis for certification under subpart H of this regulation of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this regulation, if any, has changed; and~~

~~—(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.~~

~~Section 96.31—Department's and EPA's Action On Compliance Certifications.~~

~~(a) The Department or the EPA may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.~~

~~(b) The EPA may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.~~

~~SUBPART E—NO_x ALLOWANCE ALLOCATIONS~~

~~Section 96.40—State Trading Program Budget.~~

~~—The State trading program budget allocated by the Department under Section 96.42 for a control period is 19,678 tons. In accordance with Sections 96.41 and 96.42, the Department will allocate to the NO_x Budget units under Section 96.4(a) for each control period a total number of NO_x allowances equal to the trading program budget specified above, less the sum of the NO_x emission limitations (in tons) for each unit exempt under Section 96.4(b) that is not allocated any NO_x allowances under Section 96.42(b) or (c) for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under Section 96.42(d)(5)(ii)(B).~~

~~Section 96.41—Timing Requirements for NO_x Allowance Allocations.~~

~~(a) By the effective date of this regulation, the Department will submit to the EPA the NO_x allowance allocations, in accordance with Section 96.42, for the control periods in 2004, 2005, and 2006.~~

~~(b) By April 1, 2004, and by April 1 of each five years thereafter, the Department will submit to the EPA the NO_x allowance allocations, in accordance with Section 96.42, for the control periods in the years that are three, four, five, six and seven years after the applicable deadline for submission under this paragraph (b). If the Department fails to submit to the EPA the NO_x allowance allocations in accordance with this paragraph (b), the EPA will allocate, for the applicable control period, the same number of NO_x allowances as were allocated for the preceding control period.~~

~~(c) By April 1, 2005 and April 1 of each year thereafter, the Department will submit to the EPA the NO_x allowance allocations, in accordance with Section 96.42, for any NO_x allowances remaining in the allocation set aside for the prior control period.~~

~~Section 96.42—NO_x Allowance Allocations.~~

~~(a) (1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under Section 96.4 will be:~~

~~—(i) For a NO_x allowance allocation under Section 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, 1997, 1998, and 1999, if the unit is under Section 96.4(a)(1), or if the unit is under Section 96.4(a)(2), the NO_x allowance shall be as set forth in the State Implementation Plan; and~~

~~—(ii) For a NO_x allowance allocation under Section 96.41(b), the average of the two highest amounts of the unit's heat input for the control period in the years that are four, five, six, seven and eight~~

~~years before the first year for which the NO_x allocation is being calculated or if a unit only operated during one of these control periods the heat input during the single year of operation.~~

~~—(2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with 40 CFR part 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.~~

~~(b) For each control period under Section 96.41, the Department will allocate to all NO_x Budget units under Section 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO_x allowances equal to 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the tons of NO_x emissions in the State trading program budget apportioned to electric generating units under Section 96.40 in accordance with the following procedures:~~

~~—(1) The Department will allocate NO_x allowances to each NO_x Budget unit under Section 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO_x allowance as appropriate.~~

~~—(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under Section 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading program budget apportioned to electric generating units, the Department will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (b)(1) of this section so that the total number of NO_x allowances allocated equals 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading program budget apportioned to electric generating units divided by the total number of NO_x allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NO_x allowance as appropriate.~~

~~(c) For each control period under Section 96.41, the Department will allocate to all NO_x Budget units under Section 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO_x allowances equal to 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the tons of NO_x emissions in the State trading program budget apportioned to non-electric generating units under Section 96.40 in accordance with the following procedures:~~

~~—(1) The Department will allocate NO_x allowances to each NO_x Budget unit under Section 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO_x allowance as appropriate.~~

~~—(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under Section 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading program budget apportioned to non-electric generating units, the Department will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (c)(1) of this section so that the total number of NO_x allowances allocated equals 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading~~

~~program budget apportioned to non electric generating units. This adjustment will be made by: multiplying each unit's allocation by 96 percent in 2004, 2005, and 2006, or 97 percent thereafter, of the number of tons of NO_x emissions in the State trading program budget apportioned to non electric generating units divided by the total number of NO_x allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NO_x allowance as appropriate.~~

~~(d) For each control period under Section 96.41, the Department will allocate NO_x allowances to NO_x Budget units under Section 96.4 in the State that commenced operation, or are projected to commence operation, on or after May 1 of the year that is four years prior to the first year of the period for which NO_x allowances are being calculated, in accordance with the following procedures:~~

~~— (1) The Department will establish one allocation set aside for each control period. Each allocation set aside will be allocated NO_x allowances equal to 4 percent in 2004, 2005, and 2006, or 3 percent thereafter, of the tons of NO_x emissions in the State trading program budget under Section 96.40, rounded to the nearest whole NO_x allowance as appropriate.~~

~~— (2) The NO_x-authorized account representative of a NO_x Budget unit under paragraph (d) of this section may submit to the Department a request, in writing or in a format specified by the Department, to be allocated NO_x allowances for the control period. The NO_x allowance allocation request must be received on or after the date on which the Department issues a permit to construct the unit and by January 1 before the control period for which the NO_x allowance allocation is requested.~~

~~— (3) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for units under Section 96.4(a)(1) may request for a control period NO_x allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.~~

~~— (4) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for units under Section 96.4(a)(2) may request for a control period NO_x allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.~~

~~— (5) The Department will review each NO_x allowance allocation request under paragraph (d)(2) of this and will allocate NO_x allowances pursuant to such request as follows:~~

~~— (i) Upon receipt of the NO_x allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Section 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under Section 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.~~

~~— (ii) The Department will determine the following:~~

~~— (A) The sum of the NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) in all NO_x allowance allocation requests under paragraph (d)(2) of this section for the control period; and~~

~~_____ (B) For units exempt under Section 96.4(b), the sum of the NO_x-emission limitations (in tons of NO_x) on which each unit's exemption under Section 96.4(b) is based.~~

~~_____ (iii) If the number of NO_x-allowances in the allocation set aside for the control is not less than the amount determined under paragraph (d)(5)(ii) of this section, the Department will allocate the amount of the NO_x-allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO_x Budget unit for which the allocation request was submitted.~~

~~_____ (iv) If the number of NO_x-allowances in the allocation set aside for the control is less than the amount determined under paragraph (d)(5)(ii) of this section, the Department will allocate, to the NO_x Budget unit for which the allocation request was submitted, the amount of NO_x-allowances requested (as adjusted under paragraph (d)(5)(i) of this section) multiplied by the number of NO_x-allowances in the allocation set aside for the control period, divided by the amount determined under paragraph (d)(5)(ii) of this section, and rounded to the nearest whole number of NO_x-allowances as appropriate.~~

~~_____ (iv) Once an allocation set aside for a control period has been depleted of all NO_x-allowances, the permitting authority will deny, and will not allocate any NO_x-allowances pursuant to, any NO_x allowance allocation request under which NO_x-allowances have not already been allocated for the control period.~~

~~_____ (6) By no later than March 1 of each control period, the Department will take appropriate action under paragraph (d)(5) of this section and notify the NO_x-authorized account representative that submitted the request and the EPA of the number of NO_x-allowances (if any) allocated for the control period to the NO_x Budget unit.~~

~~(e) For a NO_x Budget unit that is allocated NO_x-allowances under paragraph (d) of this section for a control period, the EPA will deduct NO_x-allowances under Section 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The EPA will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO_x-allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:~~

~~NO_x-allowances deducted for actual utilization for units under Section 96.4(a)(1) = (Unit's NO_x allowances allocated for control period) - (Unit's actual control period utilization x 0.15 lb/mmBtu); and~~

~~NO_x-allowances deducted for actual utilization for units under Section 96.4(a)(2) = (Unit's NO_x allowances allocated for control period) - (Unit's actual control period utilization x 0.17 lb/mmBtu)
where:~~

~~_____ "Unit's NO_x allowances allocated for control period" is the number of NO_x-allowances allocated to the unit for the control period under paragraph (d) of this section; and~~

~~_____ "Unit's actual control period utilization" is the utilization (in mmBtu), as defined in Section 96.2, of the unit during the control period.~~

~~(f) After making the deductions for compliance under Section 96.54(b) or (e) for a control period, the EPA will notify the Department whether any NO_x-allowances remain in the allocation set aside for the control period. The Department will allocate any such NO_x-allowances to the NO_x Budget units in the State using the following formula and rounding to the nearest whole NO_x-allowance as appropriate:~~

~~Unit's share of NO_x allowances remaining in allocation set aside = Total NO_x allowances remaining in allocation set aside x (Unit's NO_x allowance allocation ÷ State trading program budget excluding allocation set aside)~~

where:

~~—“Total NO_x allowances remaining in allocation set aside” is the total number of NO_x allowances remaining in the allocation set aside for the control period to which the allocation set aside applies;~~

~~—“Unit's NO_x allowance allocation” is the number of NO_x allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set aside applies; and~~

~~—“State trading program budget excluding allocation set aside” is the State trading program budget under Section 96.40 for the control period to which the allocation set aside applies multiplied by 96 percent if the control period is in 2004, 2005, or 2006, or 97 percent if the control period is in any year thereafter, rounded to the nearest whole NO_x allowance as appropriate.~~

~~SUBPART F—NO_x ALLOWANCE TRACKING SYSTEM~~

~~Section 96.50—NO_x Allowance Tracking System Accounts.~~

~~(a) Nature and function of compliance accounts and overdraft accounts. Consistent with Section 96.51(a), the EPA will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with one or more NO_x Budget units. Allocations of NO_x allowances pursuant to subpart E of this regulation or Section 96.88 and deductions or transfers of NO_x allowances pursuant to Section 96.31, Section 96.54, Section 96.56, subpart G of this regulation, or subpart I of this regulation will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.~~

~~(b) Nature and function of general accounts. Consistent with Section 96.51(b), the EPA will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this regulation will be recorded in the general account in accordance with this subpart.~~

~~Section 96.51—Establishment of Accounts.~~

~~(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Section 96.13, the EPA will establish:~~

~~—(1) A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and~~

~~—(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.~~

~~(b) General accounts.~~

~~—(1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the EPA and shall include the following elements in a format prescribed by the EPA:~~

~~—(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x~~

authorized account representative;

~~———— (ii) At the option of the NO_x authorized account representative, organization name and type of organization;~~

~~———— (iii) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;~~

~~———— (iv) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: “I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the EPA or a court regarding the general account.”~~

~~———— (v) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.~~

~~———— (vi) Unless otherwise required by the Department or the EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the EPA. Neither the Department nor the EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~—— (2) Upon receipt by the EPA of a complete application for a general account under paragraph (b)(1) of this section:~~

~~———— (i) The EPA will establish a general account for the person or persons for whom the application is submitted.~~

~~———— (ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, not withstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the EPA or a court regarding the general account.~~

~~———— (iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am~~

~~aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”~~

~~—————(iv) The EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.~~

~~———(3) (i) An application for a general account may designate one and only one NO_x-authorized account representative and one and only one alternate NO_x-authorized account representative who may act on behalf of the NO_x-authorized account representative. The agreement by which the alternate NO_x-authorized account representative is selected shall include a procedure for authorizing the alternate NO_x-authorized account representative to act in lieu of the NO_x-authorized account representative.~~

~~—————(ii) Upon receipt by the EPA of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NO_x-authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x-authorized account representative.~~

~~———(4) (i) The NO_x-authorized account representative for a general account may be changed at any time upon receipt by the EPA of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x-authorized account representative prior to the time and date when the EPA receives the superseding application for a general account shall be binding on the new NO_x-authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~

~~—————(ii) The alternate NO_x-authorized account representative for a general account may be changed at any time upon receipt by the EPA of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x-authorized account representative prior to the time and date when the EPA receives the superseding application for a general account shall be binding on the new alternate NO_x-authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~

~~—————(iii)(A) In the event a new person having an ownership interest with respect to NO_x-allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x-authorized account representative and any alternate NO_x-authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the EPA, as if the new person were included in such list.~~

~~—————(B) Within 30 days following any change in the persons having an ownership interest with respect to NO_x-allowances in the general account, including the addition of persons, the NO_x-authorized account representative or any alternate NO_x-authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x-allowances in the general account to include the change.~~

~~———(5) (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the EPA will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the EPA.~~

~~—————(ii) Except as provided in paragraph (b)(4) of this section, no objection or other communication~~

~~submitted to the EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x-authorized account representative or any alternate NO_x-authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x-authorized account representative or any alternate NO_x-authorized account representative or the finality of any decision or order by the EPA under the NO_x-Budget Trading Program.~~

~~——— (iii) The EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x-authorized account representative or any alternate NO_x-authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x-allowance transfers.~~

~~(c) Account identification. The EPA will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.~~

~~Section 96.52—NO_x-Allowance Tracking System Responsibilities of NO_x-Authorized Account Representative.~~

~~(a) Following the establishment of a NO_x-Allowance Tracking System account, all submissions to the EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x-allowances in the account, shall be made only by the NO_x-authorized account representative for the account.~~

~~(b) Authorized account representative identification. The EPA will assign a unique identifying number to each NO_x-authorized account representative.~~

~~Section 96.53—Recordation of NO_x-Allowance Allocations.~~

~~(a) The EPA will record the NO_x-allowances for 2004 in the NO_x-Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this regulation. The EPA will also record the NO_x-allowances allocated under Section 96.88(a)(1) for each NO_x-Budget opt-in source in its compliance account.~~

~~(b) Each year, after the EPA has made all deductions from a NO_x-Budget unit's compliance account and the overdraft account pursuant to Section 96.54, the EPA will record NO_x-allowances, as allocated to the unit under subpart E of this regulation or under Section 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the EPA will also record NO_x-allowances, as allocated under subpart E of this regulation, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.~~

~~(c) Serial numbers for allocated NO_x-allowances. When allocating NO_x-allowances to and recording them in an account, the EPA will assign each NO_x-allowance a unique identification number that will include digits identifying the year for which the NO_x-allowance is allocated.~~

~~Section 96.54—Compliance.~~

~~(a) NO_x-allowance transfer deadline. The NO_x-allowances are available to be deducted for compliance with a unit's NO_x-Budget emissions limitation for a control period in a given year only if the NO_x-allowances:~~

~~—— (1) Were allocated for a control period in a prior year or the same year; and~~

~~— (2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under Section 96.60 by the NO_x allowance transfer deadline for that control period.~~

~~(b) Deductions for compliance.~~

~~— (1) Following the recordation, in accordance with Section 96.61, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the EPA will deduct NO_x allowances available under paragraph (a) of this section to cover the unit's NO_x emissions (as determined in accordance with subpart H of this regulation), or to account for actual utilization under Section 96.42(e), for the control period:~~

~~— (i) From the compliance account; and~~

~~— (ii) Only if no more NO_x allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the EPA will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left most character and ending with the right most character and the letter characters assigned values in alphabetical order and less than all numeric characters).~~

~~— (2) The EPA will deduct NO_x allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:~~

~~— (i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with subpart H of this regulation, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under Section 96.42(e) for the control period; or~~

~~— (ii) Until no more NO_x allowances available under paragraph (a) of this section remain in the respective account.~~

~~(c) (1) Identification of NO_x allowances by serial number. The NO_x-authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with Section 96.30.~~

~~— (2) First in, first out. The EPA will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first in, first out (FIFO) accounting basis in the following order:~~

~~— (i) Those NO_x allowances that were allocated for the control period to the unit under subpart E or I of this regulation;~~

~~— (ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this regulation, in order of their date of recordation;~~

~~—— (iii) Those NO_x allowances that were allocated for a prior control period to the unit under subpart E or I of this regulation; and~~

~~—— (iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this regulation, in order of their date of recordation.~~

~~(d) Deductions for excess emissions.~~

~~—— (1) After making the deductions for compliance under paragraph (b) of this section, the EPA will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.~~

~~—— (2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the EPA will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~—— (3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:~~

~~—— (i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~

~~—— (ii) Each ton of excess emissions is a separate violation.~~

~~(e) Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this regulation:~~

~~—— (1) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Section 96.30.~~

~~—— (2) Notwithstanding paragraph (b)(2)(i) of this section, the EPA will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NO_x emissions, as determined in accordance with subpart H of this regulation, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under Section 96.42(e) for the control period.~~

~~(f) The EPA will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.~~

~~Section 96.55—Banking.~~

~~(a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:~~

~~—(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under Section 96.31, Section 96.54, Section 96.56, subpart G of this regulation, or subpart I of this regulation.~~

~~—(2) The EPA will designate, as a “banked” NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the EPA has made all deductions for a given control period from the compliance account or overdraft account pursuant to Section 96.54 and was allocated for that control period or a control period in a prior year.~~

~~(b) Each year starting in 2004, after the EPA has completed the designation of banked NO_x allowances under paragraph (a)(2) of this section and before May 1 of the year, the EPA will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:~~

~~—(1) The EPA will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.~~

~~—(2) If the total number of banked NO_x allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with Section 96.54.~~

~~—(3) If the total number of banked NO_x allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with Section 96.54, except as follows:~~

~~—(i) The EPA will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located and divided by the total number of banked NO_x allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.~~

~~—(ii) The EPA will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined using the formula specified in paragraph (b)(3)(i). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with Section 96.54. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with Section 96.54, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances must be deducted for each deduction of one NO_x allowance required under Section 96.54.~~

~~(c) Any NO_x Budget unit may reduce its NO_x emission rate in the 2000, 2001, 2002, or 2003, control period, the owner or operator of the unit may request early reduction credits, and the Department may allocate allowances in 2004 to the unit in accordance with the following requirements:~~

~~— (1) Each NO_x Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NO_x emissions in accordance with subpart H of this regulation. Each budget unit must monitor their emissions during the control period for which early reduction credits are requested and must have monitoring data for at least one control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during any control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions related requirements.~~

~~— (2) NO_x emission rate and heat input under paragraphs (c)(4) through (5) of this section shall be determined in accordance with subpart H of this regulation.~~

~~— (3) NO_x allowances allocated for early reduction credits in accordance with this section may be deducted for compliance during the 2004 and 2005 control periods only.~~

~~— (4) The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of paragraphs (c)(1) of this section may submit to the Department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2000, 2001, 2002, or 2003.~~

~~— (i) In the early reduction credit request, the NO_x authorized account representative for units under Section 96.4(a)(1) may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the unit's state and federally approved NO_x permit limit and the unit's NO_x emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton. After the early reduction credits are calculated, the credits shall be discounted for units that do not reduce down to 0.25 lb/mmBtu so that for each ton of NO_x reduction achieved down to but not including 0.25 lb/mmBtu, the unit shall receive one half credit. For units that reduce their NO_x emissions beyond and including 0.25 lb/mmBtu, the credits will not be discounted and the unit shall receive one credit for each ton of NO_x reduction.~~

~~— (ii) For units under 96.4(a)(2) and for units under 96.4(a)(1) that do not have a state and federally approved NO_x permit limit, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the unit's emission rate in the control period prior to the NO_x emission rate reduction in lb/mmBtu and the unit's NO_x emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton; the difference must reflect only additional reductions to prior existing requirement. After the early reduction credits are calculated, the credits shall be discounted for units that do not reduce down to 0.25 lb/mmBtu so that for each ton of NO_x reduction achieved down to but not including 0.25 lb/mmBtu, the unit shall receive one half credit. For units that reduce their NO_x emissions beyond and including 0.25 lb/mmBtu, the credits will not be discounted and the unit shall receive one credit for each ton of NO_x reduction.~~

~~— (iii) For units under 96.4(a)(1) that utilize NO_x emissions averaging to demonstrate compliance with the Acid Rain Nitrogen Oxides Emission Reduction Program promulgated under 40 CFR part 76 and average those emissions based on units operating exclusively in the State of South Carolina, the early reduction credit request must be based on the total reductions from all the units participating in the emissions averaging program.~~

~~— (iv) For reductions that occur during only a portion of the control period, the heat input used to determine the early reduction credits shall be based only on the period of time for which the reductions occurred.~~

~~———— (v) If the sum of the early reduction credit requests from paragraphs (4)(i) and (4)(ii) above, is less than the total NO_x allowances available in the State’s compliance supplement pool, the Department shall adjust the discounted credits in paragraphs (4)(i) and (4)(ii) until the sum of the early reduction credit requests equals the amount of NO_x allowances available. However, at no time shall the Department allocate more than one early reduction credit for each ton of NO_x reduced.~~

~~———— (vi) The early reduction credit request must be submitted, in a format specified by the Department, by February 1, 2004.~~

~~—— (5) The Department will allocate NO_x allowances, to NO_x Budget units meeting the requirements of paragraphs (c)(1) of this section in accordance with the following procedures:~~

~~———— (i) Upon receipt of each early reduction credit request, the Department will accept the request only if the requirements of paragraphs (c)(1), (3), and (4) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.~~

~~———— (ii) If the State’s compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2000, 2001, 2002, and 2003 (as adjusted under paragraph (c)(5)(i) of this section) submitted by February 1, 2004, the Department will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).~~

~~———— (iii) If the State’s compliance supplement pool has a smaller amount of NO_x allowances than the number of early reduction credits in all accepted early reduction credit requests for 2000, 2001, 2002, and 2003 (as adjusted under paragraph (c)(5)(i) of this section) submitted by February 1, 2004, the Department will allocate NO_x allowances to each NO_x Budget unit covered by such accepted requests according to the following formula and rounded to the nearest whole number of NO_x allowances as appropriate:~~

~~Unit’s allocated early reduction credits = [(Unit’s adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NO_x allowances from the State’s compliance supplement pool)~~

~~where:~~

~~—— “Unit’s adjusted early reduction credits” is the number of early reduction credits for the unit for 2000, 2001, 2002, and 2003, in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.~~

~~—— “Total adjusted early reduction credits requested by all units” is the number of early reduction credits for all units for 2000, 2001, 2002, and 2003, in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.~~

~~—— “Available NO_x allowances from the State’s compliance supplement pool” is the number of NO_x allowances in the State’s compliance supplement pool and available for early reduction credits for 2000, 2001, 2002, and 2003.~~

~~—— (6) After the NO_x allowances have been distributed for early reduction credits, any remaining NO_x allowances in the compliance supplement pool (if any) will be distributed to sources that demonstrate a~~

~~need for an extension of the May 31, 2004 compliance deadline according to the following provisions:~~

~~———— (i) Applications should be submitted by February 1, 2004.~~

~~———— (ii) The issuance process will be completed no later than May 31, 2004.~~

~~———— (iii) Sources that apply must demonstrate the following:~~

~~———— (A) For a source used to generate electricity, compliance with the State implementation plan's applicable control measures by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with the State implementation plan revision.~~

~~———— (B) For a source not used to generate electricity, compliance with the State implementation plan's applicable control measures by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in paragraph (c)(6)(iii)(A) of this section.~~

~~———— (C) That it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.~~

~~———— (D) That it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.~~

~~———— (iv) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a source under paragraph(c)(6) of this section.~~

~~———— (v) NO_x allocations (if any) that remain in the compliance supplement pool after distributions are completed for sources with qualifying early reduction credits will be distributed to sources that meet the provisions described in paragraph (c)(6) of this section in accordance with the following procedures:~~

~~———— (A) If the State's compliance supplement pool has an amount of NO_x allowances not less than the number of credits in all accepted credit requests for 2000, 2001, 2002 and 2003 submitted by February 1, 2004, the Department will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each credit requested.~~

~~———— (B) If the State's compliance supplement pool has a smaller amount of NO_x allowances than the number of credits in all accepted credit requests for 2000, 2001, 2002, and 2003, submitted by February 1, 2004, the Department will allocate NO_x allowances to each NO_x Budget unit covered by such accepted requests according to the following formula and rounded to the nearest whole number of NO_x allowances as appropriate:~~

~~Unit's allocated credits = [(Unit's adjusted credits)/(Total adjusted credits requested by all units)] x (Available NO_x allowances from the State's compliance supplement pool)~~

~~where:~~

~~———— "Unit's adjusted credits" is the number of credits for the unit for 2000, 2001, 2002, and 2003, in accepted credit requests.~~

~~—“Total adjusted credits requested by all units” is the number of credits for all units for 2000, 2001, 2002, and 2003, in accepted credit requests.~~

~~—“Available NO_x allowances from the State’s compliance supplement pool” is the number of NO_x allowances in the State’s compliance supplement pool and available for credits for 2000, 2001, 2002, and 2003.~~

~~—(7) By May 31, 2004, the Department will submit to the EPA the allocations of NO_x allowances determined under paragraph (c)(5) and (c)(6) of this section. The EPA will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (6) of this section.~~

~~—(8) NO_x allowances recorded under paragraph (c)(7) of this section may be deducted for compliance under Section 96.54 for the control periods in 2004 or 2005. Notwithstanding paragraph (a) of this section, the EPA will deduct as retired any NO_x allowance that is recorded under paragraph (c)(7) of this section and is not deducted for compliance in accordance with Section 96.54 for the control period in 2004 or 2005.~~

~~—(9) NO_x allowances recorded under paragraph (c)(7) of this section are treated as banked allowances in 2005 for the purposes of paragraphs (a) and (b) of this section.~~

~~Section 96.56—Account Error.~~

~~—The EPA may correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the EPA will notify the NO_x authorized account representative for the account.~~

~~Section 96.57—Closing of General Accounts.~~

~~(a) The NO_x authorized account representative of a general account may instruct the EPA to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under Section 96.60 an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.~~

~~(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the EPA may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the EPA receives a correctly submitted transfer of NO_x allowances into the account under Section 96.60 or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the EPA good cause as to why the account should not be closed.~~

~~SUBPART C—NO_x ALLOWANCE TRANSFERS~~

~~Section 96.60—Submission of NO_x Allowance Transfers.~~

~~—The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the EPA. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the EPA:~~

- ~~(a) The numbers identifying both the transferor and transferee accounts;~~
- ~~(b) A specification by serial number of each NO_x allowance to be transferred; and~~
- ~~(c) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.~~

~~Section 96.61—EPA Recordation.~~

~~(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in paragraph (b) of this section, the EPA will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:~~

- ~~—— (1) The transfer is correctly submitted under Section 96.60;~~
- ~~—— (2) The transferor account includes each NO_x allowance identified by serial number in the transfer; and~~
- ~~—— (3) The transfer meets all other requirements of this regulation.~~

~~(b) A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in Section 96.53(b).~~

~~(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the EPA will not record such transfer.~~

~~Section 96.62—Notification.~~

~~(a) Notification of recordation. Within 5 business days of recordation of a NO_x allowance transfer under Section 96.61, the EPA will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.~~

~~(b) Notification of non-recordation. Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of Section 96.61(a), the EPA will notify the NO_x authorized account representatives of both accounts subject to the transfer of:~~

- ~~—— (1) A decision not to record the transfer; and~~
- ~~—— (2) The reasons for such non-recordation.~~

~~(c) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.~~

~~SUBPART H—MONITORING AND REPORTING~~

~~Section 96.70—General Requirements.~~

~~—— The owners and operators, and to the extent applicable, the NO_x authorized account representative of~~

~~a NO_x Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of 40 CFR part 75. For purposes of complying with such requirements, the definitions in Section 96.2 and in 40 CFR part 72 section 72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in 40 CFR part 75 shall be replaced by the terms “NO_x Budget unit,” “NO_x authorized account representative,” and “continuous emission monitoring system” (or “CEMS”), respectively, as defined in Section 96.2.~~

~~(a) Requirements for installation, certification, and data accounting.~~

~~—The owner or operator of each NO_x Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this regulation:~~

~~—(1) Install all monitoring systems required under this subpart for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR parts 75 sections 75.71 and 75.72.~~

~~—(2) Install all monitoring systems for monitoring heat input, if required under Section 96.76 for developing NO_x allowance allocations.~~

~~—(3) Successfully complete all certification tests required under Section 96.71 and meet all other provisions of this subpart and 40 CFR part 75 applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.~~

~~—(4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this section.~~

~~(b) Compliance dates.~~

~~—The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:~~

~~—(1) NO_x Budget units for which the owner or operator intends to apply for early reduction credits under Section 96.55(d) must comply with the requirements of this subpart by May 1, 2003 or if early reduction credits are being requested before this date than in the control period prior to the one for which the early reduction credits are requested.~~

~~—(2) Except for NO_x Budget units under paragraph (b) (1) of this section, NO_x Budget units under Section 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2003.~~

~~—(3) NO_x Budget units under Section 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under Section 96.74(d) must comply with the requirements of this subpart by the later of the following dates:~~

~~—(i) May 1, 2003; or~~

~~—(ii) the earlier of:~~

~~—(A) 180 days after the date on which the unit commences operation or,~~

~~————— (B) For units under Section 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.~~

~~—— (4) NO_x Budget units under Section 96.4 that commence operation on or after January 1, 2003 and that report on a control season basis under Section 96.74(d) must comply with the requirements of this subpart by the later of the following dates:~~

~~————— (i) the earlier of:~~

~~————— (A) 180 days after the date on which the unit commences operation or,~~

~~————— (B) for units under Section 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.~~

~~————— (ii) However, if the applicable deadline under paragraph (b)(4)(i) section does not occur during a control period, then the unit must comply by May 1, of the year immediately following the date determined in accordance with paragraph (b)(4)(i) of this section.~~

~~—— (5) For a NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this regulation:~~

~~————— (i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue~~

~~————— (ii) However, if the unit reports on a control season basis under Section 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, then the unit must comply by May 1, of the year immediately following the applicable deadline in paragraph (b)(5)(i) of this section.~~

~~—— (6) For a unit for which an application for a NO_x Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this regulation.~~

~~(c) Reporting data prior to initial certification.~~

~~—— (1) The owner or operator of a NO_x Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.~~

~~—— (2) The owner or operator of a NO_x Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NO_x mass, heat input (if required for purposes of allocations) and any other values required to determine NO_x Mass (e.g. NO_x emission rate and heat input or NO_x concentration and stack flow) using the provisions of Section 75.70(g) of 40 CFR part 75, from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under appendix D or E of 40 CFR part 75, or excepted monitoring methodology under Section 75.19 of 40 CFR part 75 is provisionally certified.~~

~~(d) Prohibitions.~~

~~—— (1) No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under Section 75.72(b)(2)(ii) of 40 CFR part 75 shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having~~

~~obtained prior written approval in accordance with Section 96.75.~~

~~— (2) No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under Section 75.72(b)(2)(ii) of 40 CFR part 75 shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and 40 CFR part 75 except as provided for in Section 75.74.~~

~~— (3) No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under Section 75.72(b)(2)(ii) of 40 CFR part 75 shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and 40 CFR part 75 except as provided for in Section 75.74.~~

~~— (4) No owner or operator of a NO_x Budget units or a non-NO_x Budget unit monitored under Section 75.72(b)(2)(ii) of 40 CFR part 75 shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:~~

~~— (i) During the period that the unit is covered by a retired unit exemption under Section 96.5 that is in effect;~~

~~— (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and 40 CFR part 75, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or~~

~~— (iii) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Section 96.71(b)(2).~~

~~Section 96.71—Initial Certification And Recertification Procedures.~~

~~(a) The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR part 75, except that:~~

~~— (1) If, prior to January 1, 1998, the EPA approved a petition under Section 75.17(a) or (b) of 40 CFR part 75 for apportioning the NO_x emission rate measured in a common stack or a petition under Section 75.66 of 40 CFR part 75 for an alternative to a requirement in Section 75.17 of 40 CFR part 75, the NO_x authorized account representative shall resubmit the petition to the EPA under Section 96.75(a) to determine if the approval applies under the NO_x Budget Trading Program.~~

~~— (2) For any additional CEMS required under the common stack provisions in Section 75.72 of 40 CFR part 75, or for any NO_x concentration CEMS used under the provisions of Section 75.71(a)(2) of 40 CFR part 75, the owner or operator shall meet the requirements of paragraph (b) of this section.~~

~~(b) The owner or operator of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under Section 75.19 of 40 CFR part 75 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR part 75 shall also meet the requirements of paragraph (d) of this section. The owner or operator of a~~

~~NO_x Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in Section 75.72 of 40 CFR part 75, or that uses a NO_x concentration CEMS under Section 75.71(a)(2) of 40 CFR part 75 also shall comply with the following initial certification and recertification procedures:~~

~~—(1) Requirements for initial certification:~~

~~—The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under Section 75.20 of 40 CFR part 75. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in Section 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this regulation in a location where no such monitoring system was previously installed, initial certification according to Section 75.20 of 40 CFR part 75 is required.~~

~~—(2) Requirements for recertification:~~

~~—Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of Section 75.21 or appendix B to 40 CFR part 75, the owner or operator shall recertify the monitoring system according to Section 75.20(b) of 40 CFR part 75. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to Section 75.20(b) of 40 CFR part 75. Examples of changes which require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.~~

~~—(3) Certification approval process for initial certifications and recertification:~~

~~—(i) Notification of certification. The NO_x authorized account representative shall submit to the Department and to the appropriate EPA Regional Office a written notice of the dates of certification in accordance with Section 96.73.~~

~~—(ii) Certification application. The NO_x authorized account representative shall submit to the Department a certification application for each monitoring system required under subpart H of 40 CFR part 75. A complete certification application shall include the information specified in subpart H of 40 CFR part 75.~~

~~—(iii) Except for units using the low mass emission excepted methodology under Section 75.19 of 40 CFR part 75, the provisional certification date for a monitor shall be determined using the procedures set forth in Section 75.20(a)(3) of 40 CFR part 75. A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR part 75, will be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.~~

~~—(iv) Certification application formal approval process. The Department will issue a written~~

notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the Department does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR part 75 and is included in the certification application will be deemed certified for use under the NO_x Budget Trading Program.

————— (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR part 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

————— (B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the NO_x-authorized account representative must submit the additional information required to complete the certification application. If the NO_x-authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.

————— (C) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

————— (D) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with Section 96.72(b).

————— (v) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

————— (A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under Section 75.20 (a)(4)(iii), Section 75.20(b)(5), Section 75.20(h)(4), or Section 75.21(e) and continuing until the date and hour specified under Section 75.20(a)(5)(i) of 40 CFR part 75:

————— (1) For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under Section 75.19 of 40 CFR part 75, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit.

————— (2) For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under Section 2.1 of appendix A of 40 CFR part 75;

~~_____ (B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section; and~~

~~_____ (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.~~

~~(c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under Section 75.19 of 40 CFR Part 75. The owner or operator of a gas fired or oil fired unit using the low mass emissions excepted methodology under Section 75.19 of 40 CFR part 75 and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of Section 75.10 of 40 CFR part 75 and the applicable requirements of Section 75.19 of 40 CFR part 75. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program as of the following dates:~~

~~_____ (1) For a unit that does not have monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under Section 75.19 of 40 CFR part 75 for the unit, starting on the date of such submission until the completion of the period for the Department's review.~~

~~_____ (2) For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under Section 75.19 of 40 CFR part 75 for the unit and that reports data on an annual basis under Section 96.74(d), starting January 1 of the year after the year of such submission until the completion of the period for the Department's review.~~

~~_____ (3) For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x Authorized Account Representative submits the certification application under Section 75.19 of 40 CFR part 75 for the unit and that reports on a control season basis under Section 96.74(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Department's review.~~

~~(d) Certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the EPA and, if applicable, the Department under subpart E of 40 CFR part 75 shall apply for certification to the Department prior to use of the system under the NO_x Trading Program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and Section 75.20(f) of 40 CFR part 75.~~

~~Section 96.72—Out of Control Periods.~~

~~(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR part 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR part 75.~~

~~(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial~~

~~certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under Section 96.71 or the applicable provisions of 40 CFR part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the EPA. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in Section 96.71 for each disapproved system.~~

~~Section 96.73—Notifications.~~

~~— The NO_x-authorized account representative for a NO_x Budget unit shall submit written notice to the Department and the EPA in accordance with Section 75.61 of 40 CFR part 75, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.~~

~~Section 96.74—Recordkeeping and Reporting.~~

~~(a) General provisions.~~

~~— (1) The NO_x-authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of Section 96.10(e).~~

~~— (2) If the NO_x-authorized account representative for a NO_x Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR part 75 and which includes data and information required under this subpart or subpart H of 40 CFR part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR part 72, the submission must also be signed by the designated representative or the alternative designated representative.~~

~~(b) Monitoring Plans.~~

~~— (1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of Section 75.62 of 40 CFR part 75, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR part 75.~~

~~— (2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of Section 75.62 of 40 CFR part 75, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR part 75.~~

~~(c) Certification Applications. The NO_x-authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under Section 96.71 including the information required under subpart H of 40 CFR part 75.~~

~~(d) Quarterly reports. The NO_x-authorized account representative shall submit quarterly reports, as follows:~~

~~— (1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of this subpart H, the NO_x-authorized account representative shall submit a quarterly report for each calendar quarter beginning with:~~

~~— (i) For units that elect to comply with the early reduction credit provisions under Section 96.55 of this regulation, the calendar quarter that includes the date of initial provisional certification under Section 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~

~~— (ii) For units commencing operation prior to May 1, 2003 that are not required to certify monitors by May 1, 2003 under Section 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Section 96.71(b)(3)(iii) or Section 96.71(e) or, if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or~~

~~— (iii) For a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.~~

~~— (2) If a NO_x budget unit is not subject to an Acid Rain emission limitation, then the NO_x-authorized account representative shall either:~~

~~— (i) Meet all of the requirements of 40 CFR part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in paragraph (d)(1) of this section; or~~

~~— (ii) submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under Section 75.74(d)(3) through September 30 of each year in accordance with the provisions of Section 75.74(e)(6) of 40 CFR part 75. The NO_x-authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:~~

~~— (A) For units that elect to comply with the early reduction credit provisions under Section 96.55, the calendar quarter that includes the date of initial provisional certification under Section 96.71(b)(3)(iii) or 96.71(e). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~

~~— (B) For units commencing operation prior to May 1, 2003 that are not required to certify monitors by May 1, 2003 under Section 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Section 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2003; or~~

~~— (C) For units that commence operation after May 1, 2003 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or~~

~~— (D) For units that commence operation after May 1, 2003 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial~~

~~provisional certification under Section 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~

~~————— (E) For units that commence operation after May 1, 2003 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Section 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~

~~————— (3) The NO_x authorized account representative shall submit each quarterly report to the EPA within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR part 75 and Section 75.64 of 40 CFR part 75.~~

~~————— (i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR part 75 for each NO_x Budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR part 75.~~

~~————— (ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR part 75 for each NO_x Budget unit (or group of units using a common stack).~~

~~————— (4) Compliance certification. The NO_x authorized account representative shall submit to the EPA a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~

~~————— (i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and 40 CFR part 75, including the quality assurance procedures and specifications; and~~

~~————— (ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with Section 75.34(a)(1) of 40 CFR part 75, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and~~

~~————— (iii) For a unit that is reporting on a control period basis under Section 96.74(d) the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of 40 CFR part 75 are calculated using only values from a control period and do not systematically underestimate NO_x emissions.~~

Section 96.75—Petitions.

~~(a) The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Section 75.66 of 40 CFR part 75 to the EPA requesting approval to apply an alternative to any requirement of this subpart.~~

~~————— (1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the EPA, in consultation with the Department.~~

~~—(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Section 75.72 of 40 CFR part 75, the petition is governed by paragraph (b) of this section.~~

~~(b) The NO_x-authorized account representative of a NO_x-Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under Section 75.66 of 40 CFR part 75 to the Department and the EPA requesting approval to apply an alternative to any requirement of this subpart.~~

~~—(1) The NO_x-authorized account representative of a NO_x-Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Section 75.66 of 40 CFR part 75 to the Department and the EPA requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Section 75.72 of 40 CFR part 75 or a NO_x-concentration CEMS used under 75.71(a)(2) of 40 CFR part 75.~~

~~—(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the Department and the EPA.~~

~~Section 96.76—Additional Requirements to Provide Heat Input Data.~~

~~(a) The owner or operator of a unit that elects to monitor and report NO_x-Mass emissions using a NO_x-concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR part 75 for any source located in a state developing source allocations based upon heat input.~~

~~(b) The owner or operator of a unit that monitor and report NO_x-Mass emissions using a NO_x-concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR part 75 for any source that is applying for early reduction credits under Section 96.55.~~

~~SUBPART I—INDIVIDUAL OPT-INS~~

~~Section 96.80—Applicability.~~

~~—A unit that is in the State, is not a NO_x-Budget unit under Section 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NO_x-Budget opt-in source. A unit that is a NO_x-Budget unit, is covered by a retired unit exemption under Section 96.5 that is in effect, or is not operating is not eligible to become a NO_x-Budget opt-in source.~~

~~Section 96.81—General.~~

~~—Except otherwise as provided in this regulation, a NO_x-Budget opt-in source shall be treated as a NO_x-Budget unit for purposes of applying subparts A through H of this regulation.~~

~~Section 96.82—NO_x-Authorized Account Representative.~~

~~—A unit for which an application for a NO_x-Budget opt-in permit is submitted and not denied or withdrawn, or a NO_x-Budget opt-in source, located at the same source as one or more NO_x-Budget units, shall have the same NO_x-authorized account representative as such NO_x-Budget units.~~

~~Section 96.83—Applying for NO_x Budget Opt In Permit.~~

~~(a) Applying for initial NO_x Budget opt in permit. In order to apply for an initial NO_x Budget opt in permit, the NO_x authorized account representative of a unit qualified under Section 96.80 may submit to the Department at any time, except as provided under Section 96.86(g):~~

~~— (1) A complete NO_x Budget permit application under Section 96.22;~~

~~— (2) A monitoring plan submitted in accordance with subpart H of this regulation; and~~

~~— (3) A complete account certificate of representation under Section 96.13, if no NO_x authorized account representative has been previously designated for the unit.~~

~~(b) Duty to reapply. The NO_x authorized account representative of a NO_x Budget opt in source shall submit a complete NO_x Budget permit application under Section 96.22 to renew the NO_x Budget opt in permit in accordance with Section 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this regulation.~~

~~Section 96.84—Opt In Process.~~

~~— The Department will issue or deny a NO_x Budget opt in permit for a unit for which an initial application for a NO_x Budget opt in permit under Section 96.83 is submitted, in accordance with Section 96.20 and the following:~~

~~(a) Interim review of monitoring plan. The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt in permit under Section 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this regulation. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.~~

~~(b) If the Department determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this regulation, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this regulation for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt in permit covering the unit.~~

~~(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions (in lb) for the control period divided by the unit's baseline heat rate.~~

~~(d) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraph (c) of this section, the Department will serve a draft NO_x Budget opt in permit on the NO_x authorized account representative of the unit.~~

~~(e) Confirmation of intention to opt in. Within 20 days after the issuance of the draft NO_x Budget opt in permit, the NO_x authorized account representative of the unit must submit to the Department a~~

~~confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x Budget opt in permit under Section 96.83. The Department will treat the failure to make a timely submission as a withdrawal of the NO_x Budget opt in permit application.~~

~~(f) Issuance of draft NO_x Budget opt in permit. If the NO_x authorized account representative confirms the intention to opt in the unit under paragraph (e) of this section, the Department will issue the draft NO_x Budget opt in permit in accordance with Section 96.20.~~

~~(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NO_x Budget opt in permit for the unit, the Department determines that the unit does not qualify as a NO_x Budget opt in source under Section 96.80, the Department will issue a draft denial of a NO_x Budget opt in permit for the unit in accordance with Section 96.20.~~

~~(h) Withdrawal of application for NO_x Budget opt in permit. A NO_x authorized account representative of a unit may withdraw its application for a NO_x Budget opt in permit under Section 96.83 at any time prior to the issuance of the final NO_x Budget opt in permit. Once the application for a NO_x Budget opt in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x Budget permit under Section 96.83.~~

~~(i) Effective date. The effective date of the initial NO_x Budget opt in permit shall be May 1 of the first control period starting after the issuance of the initial NO_x Budget opt in permit by the Department. The unit shall be a NO_x Budget opt in source and a NO_x Budget unit as of the effective date of the initial NO_x Budget opt in permit.~~

~~Section 96.85—NO_x Budget Opt In Permit Contents.~~

~~(a) Each NO_x Budget opt in permit (including any draft or proposed NO_x Budget opt in permit, if applicable) will contain all elements required for a complete NO_x Budget opt in permit application under Section 96.22 as approved or adjusted by the Department.~~

~~(b) Each NO_x Budget opt in permit is deemed to incorporate automatically the definitions of terms under Section 96.2 and, upon recordation by the EPA under subpart F, G, or I of this regulation, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt in source covered by the NO_x Budget opt in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located.~~

~~Section 96.86—Withdrawal From NO_x Budget Trading Program.~~

~~(a) Requesting withdrawal. To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt in source shall submit to the Department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.~~

~~(b) Conditions for withdrawal. Before a NO_x Budget opt in source covered by a request under paragraph (a) of this section may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt in permit may be terminated under paragraph (e) of this section, the following conditions must be met:~~

~~—(1) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the Department an annual compliance certification report in accordance with Section 96.30.~~

~~—(2) If the NO_x Budget opt in source has excess emissions for the control period immediately before the withdrawal is to be effective, the EPA will deduct or has deducted from the NO_x Budget opt in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located, the full amount required under Section 96.54(d) for the control period.~~

~~—(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the EPA will deduct from the NO_x Budget opt in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under Section 96.88 for any control period for which the withdrawal is to be effective. The EPA will close the NO_x Budget opt in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt in source. The NO_x authorized account representative for the NO_x Budget opt in source shall become the NO_x authorized account representative for the general account.~~

~~(c) A NO_x Budget opt in source that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt in source was a NO_x Budget opt in source, even if such requirements arise or must be complied with after the withdrawal takes effect.~~

~~(d) Notification.~~

~~—(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NO_x allowances required), the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt in source of the acceptance of the withdrawal of the NO_x Budget opt in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.~~

~~—(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt in source that the NO_x Budget opt in source's request to withdraw is denied. If the NO_x Budget opt in source's request to withdraw is denied, the Budget opt in source shall remain subject to the requirements for a NO_x Budget opt in source.~~

~~(e) Permit amendment. After the Department issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the Department will revise the NO_x Budget permit covering the NO_x Budget opt in source to terminate the NO_x Budget opt in permit as of the effective date specified under paragraph (d)(1) of this section. A NO_x Budget opt in source shall continue to be a NO_x Budget opt in source until the effective date of the termination.~~

~~(f) Reapplication upon failure to meet conditions of withdrawal. If the Department denies the NO_x Budget opt in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.~~

~~(g) Ability to return to the NO_x Budget Trading Program. Once a NO_x Budget opt in source withdraws from the NO_x Budget Trading Program and its NO_x Budget opt in permit is terminated under this section, the NO_x authority account representative may not submit another application for a NO_x Budget opt in permit under Section 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt in permit became effective.~~

Section 96.87—Change in Regulatory Status.

~~(a) Notification. When a NO_x Budget opt in source becomes a NO_x Budget unit under Section 96.4, the NO_x authorized account representative shall notify in writing the Department and the EPA of such change in the NO_x Budget opt in source's regulatory status, within 30 days of such change.~~

~~(b) Department's and EPA's action. —~~

~~—— (1) (i) When the NO_x Budget opt in source becomes a NO_x Budget unit under Section 96.4, the Department will revise the NO_x Budget opt in source's NO_x Budget opt in permit to meet the requirements of a NO_x Budget permit under Section 96.23 as of an effective date that is the date on which such NO_x Budget opt in source becomes a NO_x Budget unit under Section 96.4.~~

~~—— (ii) (A) The EPA will deduct from the compliance account for the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as:~~

~~—— (1) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt in source) under Section 96.88 for any control period after the last control period during which the unit's NO_x Budget opt in permit was effective; and~~

~~—— (2) If the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt in source) under Section 96.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.~~

~~—— (B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the EPA will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~—— (iii)(A) For every control period during which the NO_x Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NO_x Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NO_x allowance allocations under Section 96.42, as a unit that commenced operation on the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NO_x allowances under Section 96.42.~~

~~—— (B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under paragraph (b)(1)(i) of this section under Section 96.42 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under Section 96.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.~~

~~—— (2) (i) When the NO_x authorized account representative of a NO_x Budget opt in source does not renew its NO_x Budget opt in permit under Section 96.83(b), the EPA will deduct from the NO_x Budget opt in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x~~

~~Budget opt in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x Budget opt in source under Section 96.88 for any control period after the last control period for which the NO_x Budget opt in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt in source's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the EPA will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~———— (ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the EPA will close the NO_x Budget opt in source's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under Section 96.54, the EPA will close the NO_x Budget opt in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt in source. The NO_x authorized account representative for the NO_x Budget opt in source shall become the NO_x authorized account representative for the general account.~~

~~Section 96.88—NO_x Allowance Allocations To Opt In Units.~~

~~(a) NO_x allowance allocation.~~

~~———— (1) By December 31 immediately before the first control period for which the NO_x Budget opt in permit is effective, the Department will allocate NO_x allowances to the NO_x Budget opt in source and submit to the EPA the allocation for the control period in accordance with paragraph (b) of this section.~~

~~———— (2) By no later than December 31, after the first control period for which the NO_x Budget opt in permit is in effect, and December 31 of each year thereafter, the Department will allocate NO_x allowances to the NO_x Budget opt in source, and submit to the EPA allocations for the next control period, in accordance with paragraph (b) of this section.~~

~~(b) For each control period for which the NO_x Budget opt in source has an approved NO_x Budget opt in permit, the NO_x Budget opt in source will be allocated NO_x allowances in accordance with the following procedures:~~

~~———— (1) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:~~

~~———— (i) The NO_x Budget opt in source's baseline heat input determined pursuant to Section 96.84(c); or~~

~~———— (ii) The NO_x Budget opt in source's heat input, as determined in accordance with subpart H of this regulation, for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.~~

~~———— (2) The Department will allocate NO_x allowances to the NO_x Budget opt in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:~~

~~———— (i) The NO_x Budget opt in source's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to Section 96.84(c); or~~

_____ (ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x Budget opt in source during the control period.

CAIR NO_x ANNUAL TRADING PROGRAM

Subpart AA - “South Carolina CAIR NO_x Annual Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart AA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart BB - “CAIR Designated Representative For CAIR NO_x Sources”

The provisions of Title 40 CFR Part 96, subpart BB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
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Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart DD - [Reserved]

Subpart EE – “CAIR NO_x Allowance Allocations”

Section 96.140 South Carolina Trading Budget.

The State trading budgets for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009-2014 (tons)	State trading budget for 2015 and thereafter (tons)
...		
South Carolina	32,662	27,219
...		

The South Carolina trading budget for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 is 32,662 tons, and in 2015 and thereafter is 27,219 tons.

Section 96.141 Timing Requirements For CAIR NO_x Allowance Allocations.

(a) By April 30, 2007, October 31, 2006, or within 60 days after the effective date of this regulation, whichever is later, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in 2009, 2010, 2011, and 2012, 2013, and 2014.

(b) By October 31, 2009 and October 31 of every fourth year ~~each four years~~ thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in the **fourth, fifth, sixth and seventh** years after the year of the applicable deadline for submission under this paragraph.

(c) By October 31, 2009 and October 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations for new units from the new unit set-aside account, in a format prescribed by the Administrator and in accordance with section 96.142(a), (c), and (d) for the control period in the year of the applicable deadline for submission under this paragraph.

(e) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.142 CAIR NO_x Allowance Allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations ~~under paragraph (b) of this section~~ for each CAIR NO_x unit will be:

(i) ~~For units commencing operation before January 1, 2001~~**5**, the **allowances allocated for the years 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period amount of the unit's heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x annual allowance allocation is being calculated average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:**

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by **1.0 (100 percent); and**

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

~~(C)~~ (B) If the unit is not subject to paragraph (a)(1)(i)(A) ~~or (B)~~ of this section, the unit's

control period heat input for such year is multiplied by ~~40~~ **0.60 (60 percent)**.

~~(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, For a CAIR NO_x allowance allocation under section 96.141(b), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest amount of the unit's adjusted control period heat input for the years that are five, six, seven and eight years before the control periods for which the CAIR NO_x annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows: average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.~~

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

~~(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator. will be obtained from the EPA's Clean Air Market Division.~~

~~(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:~~

~~— (A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal fired for the year, or 6,675 Btu/kWh, if the unit is not coal fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~

~~— (B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or~~

~~— (C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.~~

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total

amount of CAIR NO_x allowances equal to ~~95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter,~~ of the tons of NO_x emissions in the State trading budget under section 96.140 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

(c) New Unit Set-aside: For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x allowances to CAIR NO_x units in the State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to ~~5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter,~~ of the amount of tons of NO_x emissions in the State trading budget under section 96.140.

(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period.

(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period **in accordance with subpart HH of this regulation.**

(4) The Department will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Department will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph

(c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period of ~~During 2015 and thereafter,~~ the amount of tons of NO_x emissions in the State trading budget under section 96.140, and rounded to the nearest whole allowance as appropriate.

Section 96.143 Compliance Supplement Pool.

(a) In addition to the CAIR NO_x allowances allocated under section 96.142, the Department may allocate for the control period in 2009 up to 2,600 tons ~~the following amount~~ of CAIR NO_x allowances to CAIR NO_x units in the ~~respective State.~~ **These allowances are referred to as the Compliance Supplement Pool.**

(b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_x units shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with part 96 subpart HH of this ~~part~~ **regulation** in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009 a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, determined in accordance with part 96 subpart HH of this ~~part~~ **regulation**.

(c) For any CAIR NO_x unit in the State whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with

the following:

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009 a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The Department will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the Department will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

“Unit's allocation” is the amount of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the Department will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF “CAIR NO_x Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GG “CAIR NO_x Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HH “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart II “CAIR NO_x Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart II, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are

incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart II			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR SO₂ TRADING PROGRAM

Subpart AAA “CAIR SO₂ Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart AAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart BBB “CAIR Designated Representative for CAIR SO₂ Sources”

The provisions of Title 40 CFR Part 96, subpart BBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart CCC “Permits”

The provisions of Title 40 CFR Part 96, subpart CCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDD [Reserved]

Subpart EEE [Reserved]

Subpart FFF “CAIR SO₂ Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FFF			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GGG “CAIR SO₂ Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHH “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart III “CAIR SO₂ Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart III, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart III			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

CAIR NO_x OZONE SEASON TRADING PROGRAM

~~The provisions of 61-62.96, Subparts AAAA through IIII, become effective on January 1, 2009.~~

Subpart AAAA “CAIR NO_x Ozone Season Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AAAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein, except as noted below.

40 CFR Part 96 subpart AAAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

The following definitions are added to Section 96.302 Definitions:

“Electric Generating Unit” or “EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(i), ~~and (a)(2) and (b).~~

“non-Electric Generating Unit” or “non-EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(ii).

The following definitions are revised in Section 96.302 Definitions:

“Commence operation” - (a) For units subject to 96.304 (a)(1)(i), (a)(2), or (b) commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber, except as provided in 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g. repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit’s date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in 96.384(h).

(b) For a unit subject to 96.304 (a)(1)(ii), it means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber. Except as provided in 40 CFR Section 96.5, for a unit that is a NO_x Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, such date shall remain the unit’s date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 40 CFR Section 96.5, for a unit that is not a NO_x Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under Section 96.304 (a)(1)(ii) shall be the unit’s date of commencement of operation.

“Fossil-fuel fired” - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2) or (b) it means with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit subject to 96.304 (a)(1)(ii) it means with regard to a unit:

(i)(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(ii)(2) For units that commenced operation on or after January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year.

(iii)(3) Notwithstanding the definition set forth in (b)(1) above, a unit shall be deemed fossil fuel-fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.

“Unit” - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2), or (b), unit means a stationary, fossil fueled fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit subject to 96.304 (a)(1)(ii), unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

The following changes are made in Section 96.304 Applicability:

(a) Except as provided in paragraph (b) of this section:

(1) The following units in the State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

(i) EGU Applicability: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(ii) Non-EGU Applicability: ~~Any unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.~~

(A) For units that commenced operation before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator that has a nameplate capacity greater than 25 MWe if any such generator produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.

(B) For units that commenced operation on or after January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr that:

(i) At no time served a generator producing electricity for sale; or

(ii) At any time served a generator producing electricity for sale, if any such generator has a nameplate capacity of 25MWe or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1)(i) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) This section applies only to units that are subject to section 96.304(a)(1)(i) or (a)(2). The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:

(1) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Subpart BBBB “CAIR Designated Representative for CAIR NO_x Ozone Season Sources”

The provisions of Title 40 CFR Part 96, subpart BBBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BBBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart CCCC “Permits”

The provisions of Title 40 CFR Part 96, subpart CCCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CCCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDDD [Reserved]

Subpart EEEE “CAIR NO_x Ozone Season Allowance Allocations”

Section 96.340 South Carolina trading budget.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

...

State	State trading budget for 2009- 2014 (tons)	State trading budget for 2015 and thereafter (tons)
South Carolina	15,249	12,707

...

(a) For NO_x budget units defined as EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 is 15, 249 tons and in 2015 and thereafter is 12, 707 tons.

(b) If a permitting authority issues additional CAIR NO_x Ozone Season allowance allocations under section 51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under section 51.123(aa)(2)(iii)(A) of this chapter for the year.

(b) For NO_x budget units defined as non-EGUs, the South Carolina trading budget for annual

allocations of CAIR NO_x Ozone Season allowances for 2009 and thereafter is 3,479 tons.

Section 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) For NO_x Budget units defined as EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) By April 30, 2007 ~~October 31, 2006, or within sixty days after the effective date of this regulation, whichever is later~~, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in 2009, 2010, 2011, and 2012, ~~2013, and 2014~~.

~~(b)(1)~~(2) By October 31, 2009 and October 31 of every fourth year ~~each four years~~ thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in the **fourth, fifth, sixth and seventh** years after the year of the applicable deadline for submission under this paragraph.

~~(c)(1)~~(3) By July 31, 2009 and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations **for the new unit set-aside**, in a format prescribed by the Administrator and in accordance with section 96.342(a), (c), ~~and (d)~~, for the control period in the year of the applicable deadline for submission under this paragraph.

(b) For NO_x Budget units defined as non-EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) (i) By April 30, 2007 ~~October 31, 2006, or within 60 days of the effective date of this regulation, whichever is later~~, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator, for the control periods in 2009, 2010, 2011 and 2012.

(ii) The CAIR NO_x Ozone Season allowance allocations for 2009, 2010, and 2011 will be ~~determined as follows:~~in accordance with section 96.342(e).

Company Name	Total Annual Allocations by Company for 2009, 2010, and 2011 (tons)
Bowater, Inc.	54
Eastman Carolina Chemical	510
Invista	352
International Paper: Eastover	401
Sonoco: Hartsville	228
Springs Industries: Grace	128
Stone Container: Florence	807
Cogen South	872
Weyerhaeuser: Marlboro Mill	23
TOTAL	3,375

(iii) The CAIR NO_x Ozone Season allowance allocations for 2012 will be determined in accordance with section 96.342(e).

(2) By October 31, ~~2009~~ 2008, and October 31 of every fourth year ~~each four years~~ thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31 ~~May 1~~, 2009, and July 31 ~~May 1~~ of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season new unit set-aside allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342 (g) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.342 CAIR NO_x Ozone Season Allowance Allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations ~~for EGUs under paragraph (b) of this section~~ for each CAIR NO_x Ozone Season unit ~~under section 96.341(a)~~ will be:

(i) ~~For units commencing operation before January 1, 2005, the allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period amount of the unit's heat input for the control periods in years in 2002 through 2005 for the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated.~~ For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent);

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

~~(C)~~ If the unit is not subject to paragraph (a)(1)(i)(A) ~~or (B)~~ of this section, the unit's control period heat input for such year is multiplied by ~~40~~ 0.60 (60 percent).

(ii) ~~For units commencing operation on or after January 1, 2005 and f~~ For a CAIR NO_x Ozone Season allowance allocation under section 96.341(a)(2), the allowances will be determined using the ~~single highest amount of the unit's~~ baseline heat input equal to the unit's single highest adjusted control period heat input for the years ~~control periods~~ that are five, six, seven and eight years before the first year of the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

~~For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.~~

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) ~~(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~ **Heat input data under 40 CFR part 75 will be obtained from the Administrator. will be obtained from the EPA's Clean Air Market Division.**

~~(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:~~

~~(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal fired for the year, or 6,675 Btu/kWh, if the unit is not coal fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~

~~—(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or~~

~~—(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.~~

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to **95 percent for a control period during 2009 through 2014, and 97 percent of the tons of NO_x emissions in the State EGU trading budget under Section 96.340 for a control period during 2015 and thereafter, under section 96.340 (except as provided in paragraph (d) of this section).**

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(3) CAIR NO_x allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO_x Trading program under R. 61-62.96.54.

(c) **EGU New Unit Set-aside** - For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to ~~5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter,~~ of the amount of tons of NO_x emissions in the State EGU trading budget under section 96.340(a).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the latter of the control period in 2009 or the first control period after the control period in which the CAIR NO_{xx} Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before February 1 ~~of~~ before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_{xx} Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under

paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by ~~95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter,~~ of the amount of tons of NO_x emissions in the State EGU trading budget under section 96.340, and rounded to the nearest whole allowance as appropriate.

(e) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for non-EGUs for each CAIR NO_x Ozone Season unit under section 96.341(b) will be:

(1) For a CAIR NO_x Ozone Season allowance allocation under section ~~96.341~~ 96.431(b)(1), the allowances will be determined as follows:

(i) For the control period for the years 2009, 2010 and 2011, the allocations will be ~~as specified in section 96.341 96.431(b)(1)(ii)~~ determined using the unit's baseline heat input equal to the average of the two highest amounts of the unit's heat input for the control period in the years 1999, 2000, 2001, 2002, and 2003, or, if a unit only operated during one of these control periods, the heat input during the single year of operation.

(ii) For the control period for 2012, the allocations will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the ~~amount of the unit's heat input for the control periods in years in 2004 and 2005.~~

(2) For a CAIR NO_x Ozone Season allowance allocation under section 96.341(b)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input ~~amount of the unit's heat input for the years control periods that are five, six, seven and eight years before the first year of the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated.~~

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR part 75 to the extent the ~~if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.~~ Heat input data under 40 CFR part 75 will be obtained from the Administrator ~~will be obtained from the EPA's Clean Air Market Division.~~

(f) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under

paragraph (e) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent for a control period of the tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (f)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (f)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(g) Non-EGU New Unit Set-aside - For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences ~~commercial~~ operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (h) of this section. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (g)(2) and (3) of this section.

(ii) On or after ~~February~~ April 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (g)(4)(i) of

this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (g)(4)(i) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (g)(4)(i) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(h) If, after completion of the procedures under paragraph (g)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (f) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (f) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b), and rounded to the nearest whole allowance as appropriate.

Subpart FFFF “CAIR NO_x Ozone Season Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FFFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart FFFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart GGGG “CAIR NO_x Ozone Season Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GGGG

Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHHH “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHHH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Subpart IIII “CAIR NO_x Ozone Season Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart IIII, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart IIII			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

ATTACHMENT D

State Register Notice of Drafting

Published July 22, 2005

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Notice of Drafting:

The Department is proposing to amend R.61-62, *Air Pollution Control Regulations and Standards* and the State Implementation Plan (SIP). Interested persons are invited to present their views in writing to L. Nelson Roberts, Jr., Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by August 22, 2005, the close of the drafting comment period.

Synopsis:

On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,” (also referred to as CAMR), respectively.

CAIR was published in the Federal Register on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the Federal Register on May 18, 2005 [70 FR 28606]. This rule establishes standards of performance for mercury for new and existing coal-fired electric utility steam generating units, as defined in Clean Air Act (CAA) section 111(d). This amendment to the CAA establishes a mechanism by which mercury emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. States must adopt standards of performance for mercury emissions reductions by submitting an implementation plan, referred to as a “111(d) Plan,” which requires a state rulemaking action followed by submittal to the EPA for review and approval.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006.

The Department proposes to amend Regulations 61-62, *Air Pollution Control Regulations and Standards* and the SIP to address the requirements of CAIR and CAMR.

The proposed amendments will require legislative review.

ATTACHMENT E

State Register Notice of Drafting
Published February 24, 2006

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Notice of Drafting:

The Department is proposing to amend R.61-62, *Air Pollution Control Regulations and Standards* and the State Implementation Plan (SIP). The purpose of this notice is to extend the drafting period previously established by the July 22, 2005, drafting notice published in Volume 29, Issue No. 7 of the *South Carolina State Register*. All previous comments, as well as any additional comments received after this publishing, will be considered. Interested persons are invited to present their views in writing to L. Nelson Roberts, Jr., Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 pm on Monday, March 27, 2006, the close of the drafting comment period.

Synopsis:

On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,” (also referred to as CAMR), respectively.

CAIR was published in the Federal Register on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the Federal Register on May 18, 2005 [70 FR 28606]. This rule establishes standards of performance for mercury for new and existing coal-fired electric utility steam generating units, as defined in Clean Air Act (CAA) section 111(d). This amendment to the CAA establishes a mechanism by which mercury emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. States must adopt standards of performance for mercury emissions reductions by submitting an implementation plan, referred to as a “111(d) Plan,” which requires a state rulemaking action followed by submittal to the EPA for review and approval.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must

submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006.

The Department proposes to amend Regulations 61-62, *Air Pollution Control Regulations and Standards* and the SIP to address the requirements of CAIR and CAMR.

The proposed amendments will require legislative review.

ATTACHMENT F

State Register Notice of Proposed Regulation for
Regulation 61-62, *Air Pollution Control Regulations and Standards*
And the South Carolina State Implementation Plan
January 11, 2007

Document No. 3083

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina State Implementation Plan

Preamble:

On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,” (also referred to as CAMR), respectively.

CAIR was published in the Federal Register on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxides (NO_x). Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM_{2.5} and 8-hour ozone in downwind states.

CAMR was published in the Federal Register on May 18, 2005 [70 FR 28606]. This rule establishes standards of performance for mercury for new and existing coal-fired electric utility steam generating units, as defined in Clean Air Act (CAA) section 111(d). This amendment to the CAA establishes a mechanism by which mercury emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. States must adopt standards of performance for mercury emissions reductions by submitting an implementation plan, referred to as a “111(d) Plan,” which requires a state rulemaking action followed by submittal to the EPA for review and approval.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO₂ and NO_x emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO₂ and NO_x.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006.

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, are

necessary comply with Federal rules. The Department has used its discretion to make the Clean Air Mercury Rule more stringent than the Federal rule by potentially retiring unused Hg allowances instead of providing them to affected utilities. Therefore, legislative review will be required.

A Notice of Drafting for these proposed changes was published in the *State Register* on July 22, 2005. A second Notice of Drafting extending the drafting comment period was published in the *State Register* on February 24, 2006.

Preliminary Fiscal Impact Statement:

Existing staff and resources will be utilized to implement these amendments.

Discussion of Proposed Revisions:

The Summary of Proposed Revisions is submitted in Attachment B and is omitted here to conserve space in the Board Item.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite interested members of the public to attend a staff-conducted informational forum to be held on November 27, 2006 at 10:00 a.m. in room 3141 (Wallace Room) at the Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to receive comments from interested persons on the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*.

Interested persons are also provided an opportunity to submit written comments to L. Nelson Roberts, Jr. at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on November 27, 2006. Comments received shall be submitted to the Board in a Summary of Public Comments and Department Responses.

Copies of the proposed regulation for public notice and comment may be obtained by contacting L. Nelson Roberts, Jr. at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-4122.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-110 and 1-23-111:

Interested members of the public and regulated community are invited to comment on the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards* at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on January 11, 2007. The public hearing is to be held in room 3420 (Board Room) of the Commissioner's Suite, third floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department twenty-four hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Statement of Need and Reasonableness:

The text of the Statement of Need and Reasonableness is submitted in Attachment A and is omitted here to conserve space in the Board Item.

Text of Proposed Amendments to Regulation 61-62 for Public Comment:

The text of the Proposed Amendment is submitted in Attachment C and is omitted here to conserve space in the Board Item.

ATTACHMENT G

SUMMARY OF COMMENTS RECEIVED AND DEPARTMENTAL RESPONSES

The Department published a Notice of Proposed Regulation announcing the development of the State's Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR) on October 27, 2006. This summary includes comments received as a result of the 30-day comment period that followed the publication of the Notice of Proposed Regulation in the *State Register* and the Staff Informational Forum conducted on November 27, 2006. CAIR and CAMR are separate rules. However, the rules are being developed concurrently because they are closely related. The comments summarized here are separated according to each rule and address areas where the Environmental Protection Agency (EPA) has given the State flexibility in implementing the rules. The Department's responses are in *italics*. References to "Hg" represent the word "mercury."

I. Responses to comments received after the October 27, 2006, publication of the Notice of Proposed Regulation in the *State Register*.

A. Clean Air Interstate Rule

Calpine favors an output-based allocation program with no adjustments for fuel type under CAIR, but agrees that an accord has been reached with the Department via the stakeholder process, in that coal-fired heat input values will be multiplied by a factor of 1.00, and heat input values from all affected units that use fuel other than coal will be multiplied by 0.60.

The Department is retaining the language in the proposed rule relating to this issue.

Duke Energy supports the State's proposed CAIR regulation as found in Regulation 61-62.96, which allows for trading of NO_x and SO₂ allowances.

The Department is retaining the language in the proposed rule regarding the trading programs for NO_x (both seasonal and annual) and SO₂.

EPA Comments

1. In the General Provisions of Regulation 61-62.96(a), South Carolina's draft language repeals the NO_x Budget Trading Program, subparts A through I effective January 1, 2009. The NO_x Budget Trading Program must remain effective until reconciliation for the 2008 control period occurs and, if necessary, penalty deductions occur for excess emissions. Because these actions will not occur until some time in 2009, repealing these rules as of January 1, 2009, would interfere with completion of the compliance process for 2008. Consequently, South Carolina's draft rule needs to be revised to state that the NO_x Budget Trading Program rules do not apply to the control period starting in 2009 and any control period thereafter, rather than stating that these rules are repealed.

Both the Department and the State have policies against keeping regulations that are no longer applicable. However, the Department agrees with EPA's concern and has revised the repeal date from January 1, 2009 to April 30, 2009, which is the day before the 2009 control period would start under old regulations. We believe this extra four months should allow ample time for the reconciliation and penalty assessment stages to be completed before the current regulation is repealed.

2. In order to make the transition from the NO_x SIP Call to the CAIR NO_x Ozone trading program possible, the State should consider modifying its NO_x Budget Trading Program rules to address excess emission penalties that may occur due to a shortfall after the 2008 control period. Under the NO_x Budget

Trading Program, an excess emissions penalty assessed for the 2008 control period requires the deduction of allowances from a subsequent control period. Any CAIR NO_x Ozone Season allowance for 2009 should be usable for the excess emissions penalty for the 2008 control period. Therefore, South Carolina should add language to the compliance provisions of the State's current NO_x Budget Trading Program rule to provide that the Administrator will deduct, for excess emissions for 2008, CAIR NO_x Ozone Season allowances allocated for the 2009 control period.

The Department revised section 96.342 (b) by adding the following language:

(3) CAIR NO_x allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO_x Trading program under Regulation 61-62.96 Subpart A through I.

3. In the General Provisions of Regulation 61-62.96(b), the State's draft rule states that the CAIR NO_x Ozone Season provisions of 61-62.96, Subparts AAAA through IIII become effective on January 1, 2009. Allowance allocation submissions to the EPA and allowance recordation requirements by the EPA have deadlines prior to January 1, 2009. Therefore, the General Provisions of Regulation 61-62.96(b) that reference an effective date of January 1, 2009, must be revised to state an earlier effective date. EPA suggests that one approach would be to make the rules effective upon issuance by the State. It seems that this approach would not interfere with the ongoing NO_x Budget Trading Program because, for example, the CAIR rule provisions explicitly set May 1, 2009, as the earliest date for imposition of the requirement to hold CAIR NO_x ozone season allowances to cover emissions.

The Department removed the January 1, 2009, effective date language from the proposed rule, resulting in an effective date of the proposed regulation upon publication in the State Register.

4. In 96.141(a)(1), the phrase "By October 31, 2006, or within sixty days after the effective date of this regulation, whichever is later," is not consistent with 40 CFR 51.123(o)(2)(ii)(B). However, under 40 CFR 51.123(p)(1)(ii)(B), the deadline for submission to the Administrator of allocations for 2009-2011 is April 30, 2007. If South Carolina would request to have EPA treat the provisions of Regulations 61-62.96 Subpart EE as an abbreviated SIP revision under 40 CFR 51.123(p), then an April 30, 2007, submission deadline would be acceptable for 2009-2011 allocations as consistent with the requirements of 40 CFR 51.123(p)(1)(ii)(B). This approach could also ensure that South Carolina's allocations would be implemented under 40 CFR 51.123(p) even if final EPA approval of South Carolina's entire, final CAIR NO_x Annual Trading Program under 40 CFR 51.123(o) were still ongoing.

The Department has changed the submission date to "April 30, 2007" and will request that the EPA treat the submission as an abbreviated SIP.

5. Subpart E Section 96.141(b) - The phrase "of each four years thereafter" should be revised to read, "of every fourth year thereafter."

The Department revised the language as suggested.

6. South Carolina's draft rule does not include any allocation submission deadlines for allocations to new units under 40 CFR 96.142(c). Timing requirements for these allocations must be included in the draft rule in accordance with 40 CFR 51.123(o)(2)(ii)(C).

The Department added language to 96.141 to clarify this issue.

7. Paragraphs (a)(1)(i) and (a)(1)(ii) - Paragraph (a)(1)(i) seems to indicate that the baseline heat input for

units commencing operation before January 1, 2005, will be permanent and based on the highest single adjusted annual heat input during the years 2002 – 2005. However, paragraph (a)(1)(ii), which provides for updating of the baseline heat input using a four year period starting five years before the year for which the allocations are determined, does not state that it applies to only units that commence operation on or after January 1, 2005. Therefore, it could be interpreted to mean that it applies to all CAIR NO_x units. Both procedures cannot be used at the same time for the same group of units. (The equivalent paragraph in South Carolina’s ozone season rule, Section 96.342, does indicate that it is limited to units that commence operation on or after January 1, 2005.) In addition, these paragraphs use both the term “baseline heat input” and “adjusted heat input”, but the subsequent allocation provisions refer only to “baseline heat input”. South Carolina should clarify these paragraphs and consider using consistent terminology.

The Department did not want the baseline heat input to be permanent for units constructed before January 1, 2005. The process in 96.142(a)(1)(i) is for the first allocation for years 2009 through 2012 only. The subsequent allocations will use the process in 96.142(a)(1)(ii) for all units regardless of when they were built. The Department clarified its language and has revised the rule.

8. EPA suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the years 2002 through 2005” in 96.142(a)(1)(i) to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years 2002 through 2005” and revising the phrase “with the adjusted heat input for each year calculated as follows” to read, “with the adjusted control period heat input for each year calculated as follows.”

The Department revised the language as suggested.

9. Concerning 96.142(a)(1)(ii):

(a) On the assumption that South Carolina intends to take the same approach as taken in the ozone season rule, EPA suggests beginning the paragraph with the phrase “For units commencing operation on or after January 1, 2005 and...”

Please see the discussion for No. 7 above.

(b) EPA also suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the years that are five, six, seven and eight years” to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years that are five, six, seven, and eight years.”

The Department revised the language as suggested.

(c) revising the phrase “with the adjusted heat input for each year calculated as follows” to read, “with the adjusted control period heat input for each year calculated as follows.”

The Department revised the language as suggested.

10. Concerning 96.142(a)(2):

(a) EPA suggests revising the phrase “as coal-fired or oil-fired” to read, “as coal-fired” since South Carolina’s draft does not use a unique adjustment factor for oil-fired heat input.

The Department revised the language as suggested.

(b) EPA also suggests revising the phrase “the requirements of 40 CFR part 75” to read, “the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.” The current draft rule does not address periods when units are not subject to 40 CFR part 75. Heat input data determined in accordance with 40 CFR part 75 may not be available for some periods for a unit that meets the applicability requirements of the CAIR NO_x Annual Trading Program but that was not previously subject to 40 CFR part 75.

The Department revised the language as suggested.

(c) The last sentence, “Heat input data will be obtained from the EPA’s Clean Air Markets Division,” should either be removed as unnecessary or revised to read, “Heat input data under 40 CFR part 75 will be obtained from the Administrator.”

The Department revised the language as suggested.

11. Subpart AAAA Section 96.302:

(a) Consistent with the comments below on Subpart AAAA Section 96.304, the definition of “Electric Generating Unit” should be revised to refer to any unit that is a CAIR NO_x Ozone Season unit under the language in 40 CFR 96.304(a) and (b), and the definition of “non-Electric Generating Unit” should be revised to refer to any unit that is covered by the language in South Carolina’s NO_x Budget trading program applicability provision in Regulation 61-62.96, Section 96.4(a).

The Department has revised the definition of Electric Generating Unit.

(b) In addition, the definitions for “Fossil fuel,” “Fossil-Fuel-Fired,” “Commence operation,” and “Unit” in Regulation 61-62.96, Section 96.2. need to be added to Subpart AAAA Section 96.302 and made applicable only for purposes of applying the applicability language in Regulation 61-62.96, Section 96.4(a).

The Department has revised the definitions of these words as recommended.

12. Subpart AAAA Section 96.304:

South Carolina’s draft rule links the definition of “Electric Generating Unit” or “EGU” with the applicability provisions in Section 96.304(a)(1)(i) and (a)(2) (which use the language in 40 CFR 96.304(a)(1) and (2) and the definition of “non-Electrical Generating Unit” or “non-EGU” with the applicability provisions in Section 96.304(a)(1)(ii) [which uses most of the language in Regulation 61-62.96, Section 96.4(a)(2)(i) but does not include the language in Section 96.4(a)(2)(ii)]. In addition, the draft rule appears to apply the CAIR exemptions for cogeneration units and solid waste incineration units set forth as Section 96.304(b) to units under the NO_x Budget Trading Program described in Section 96.304(a)(1)(ii). This approach does not ensure that all units covered by Regulation 61-62.96, Section 96.4(a) are included in South Carolina’s CAIR NO_x Ozone Season trading program. South Carolina’s CAIR NO_x ozone season applicability provisions should include, in their entirety, the applicability provisions from the South Carolina NO_x Budget Trading Program. Under this alternative approach, South Carolina needs to set forth two categories of units that are CAIR NO_x Ozone Season units: the first category could be referred to as covering “EGUs” and would comprise the units covered by the language in 40 CFR 96.304(a) and (b) of the CAIR model rule (as revised by the April 28, 2006, final rule); and the second category could be referred to as covering “non-EGUs” and would comprise those units not covered by 40 CFR 96.304 that are covered by the applicability language in Regulation 61-62.96, Section 96.4(a) of South Carolina’s NO_x Budget Trading Program applying the definitions for “Fossil fuel,”

“Fossil-Fuel-Fired,” “Commence operation,” and “Unit” in Regulation 61-62.96, Regulation 61-62.96, Section 96.2. The applicability provisions in 40 CFR 96.304(a) and (b) for “EGUs” would replace the revised Section 96.304(a)(1)(i) in South Carolina’s draft rule. The applicability language in Regulation 61-62.96, Section 96.4(a) would replace the revised Section 96.304(a)(1)(ii) in South Carolina’s draft rule.

The Department has revised Section 96.304 by adding all the non-EGU applicability definition from 96.4 to the non-EGU applicability section. It also restricts the CAIR exclusion language in 96.304 (b) to EGUs.

13. Subpart EEEE Section 96.341:

(a) The phrase “By October 31, 2006, or within sixty days after the effective date of this regulation, whichever is later,” is not consistent with 40 CFR 51.123(aa)(2)(iii)(C). However, under 40 CFR 51.123(ee)(2)(ii)(C), the deadline for submission to the Administrator of allocations for 2009-2011 is April 30, 2007. If South Carolina would request to have EPA treat the provisions of Regulations 61-62.96 Subpart EEEE as an abbreviated SIP revision under 40 CFR 51.123(ee), then an April 30, 2007, submission deadline would be acceptable for 2009-2011 allocations as consistent with the requirements of 40 CFR 51.123(ee)(2)(ii)(C). This approach could also ensure that South Carolina’s allocations would be implemented under 40 CFR 51.123(ee) even if final EPA approval of South Carolina’s entire, final CAIR NO_x Ozone Season Trading Program under 40 CFR 51.123(aa) were still ongoing.

The Department has changed the language in 96.341 (a)(1) to “April 30, 2007” and will request that the EPA treat the provision of regulation 61-62.96 Subpart EEEE as an abbreviated SIP.

(b) The phrase “of each four years thereafter” in 96.341(a)(2) should be revised to read, “of every fourth year thereafter.”

The Department revised the language as suggested.

(c) The deadline for submission of 2009-2011 allocations for non-EGUs under 96.341 (b)(1) needs to be the same as the deadline for submission of 2009-2011 allocations for EGUs under Section 96.341(a)(1), which is discussed above.

The Department revised the language as suggested.

(d) The phrase “of each four years thereafter” in 96.341(b)(2) should be revised to read, “of every fourth year thereafter.”

The Department revised the language as suggested.

(e) EPA suggests replacing the phrase “May 1, 2009 and May 1” in 96.341 (b)(3) with the phrase “July 31, 2009 and July 31” in order to be consistent with the timing requirements for EGUs in Section 96.341(a)(3).

The Department revised the language as suggested.

14. Subpart EEEE Section 96.342:

(a) EPA suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the control periods in the years 2002 through 2005” in 96.342(a)(1)(i) to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years 2002 through 2005.”

The Department revised the language as suggested.

(b) EPA suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the control periods that are five, six, seven and eight years” in 96.342(a)(1)(ii) to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years that are five, six, seven, and eight years.”

The Department revised the language as suggested.

(c) EPA suggests revising the phrase “part 75 of this chapter” in 96.342 (a)(2) to read, “40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.” The current draft rule does not address periods when units are not subject to 40 CFR part 75. Heat input data determined in accordance with 40 CFR part 75 may not be available for some periods for a unit that meets the applicability requirements of the CAIR NO_x Annual Trading Program but that was not previously subject to 40 CFR part 75. The last sentence, “Heat input data will be obtained from the EPA’s Clean Air Markets Division,” should either be removed as unnecessary or revised to read, “Heat input data under 40 CFR part 75 will be obtained from the Administrator.”

The Department revised the language as suggested.

(d) Consistent with paragraph (h) of this section, South Carolina may want to revise the phrase “State trading budget under section 96.340” at the end of this paragraph (d) to refer to the EGU trading budget.

The Department revised the language as suggested.

(e) Replace “section 96.431(b)(1)” in 96.342(e)(1) with “section 96.341(b)(1).”

The Department revised the language as suggested.

(f) Replace “section 96.431(b)(1)(ii)” in 96.342(e)(1)(i) with “section 96.341(b)(1)(ii).”

The Department revised the language as suggested.

(g) EPA suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the control periods in the years 2004 and 2005” in 96.342(e)(1)(ii) to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years 2004 and 2005.”

The Department revised the language as suggested.

(h) EPA suggests revising the phrase “determined using the single highest amount of the unit’s heat input for the control periods that are five, six, seven and eight years” in 96.342(e)(2) to read, “determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years that are five, six, seven, and eight years.”

The Department revised the language as suggested.

(i) EPA suggests revising the phrase “if the unit was otherwise subject to the requirements of 40 CFR part

75 for the year” in 96.342(e)(3) to read, “to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.” The current draft rule does not address periods when units are not subject to 40 CFR part 75. Heat input data determined in accordance with 40 CFR part 75 may not be available for some periods for a unit that meets the applicability requirements of the CAIR NO_x Annual Trading Program but that was not previously subject to 40 CFR part 75. The last sentence, “Heat input data will be obtained from the EPA’s Clean Air Markets Division,” should either be removed as unnecessary or revised to read, “Heat input data under 40 CFR part 75 will be obtained from the Administrator.”

The Department revised the language as suggested.

(j) This provision, which applies to non-EGUs, uses the phrase “commences commercial operation,” but some non-EGUs may not ever serve generators producing electricity for sale. South Carolina either needs to replace the phrase “commences commercial operation” in 96.342(g)(2) with the phrase “commences operation” or needs to define the date for commencement of commercial operation, for purposes of allocating to non-EGUs that do not serve generators producing electricity for sale, as the commence operation date. This refinement of the definition of “commence commercial operation” would need to be added to Section 96.302.

The Department revised the language as suggested.

(k) Paragraph (g)(4)(ii) - In order to be consistent with paragraph (c)(4)(ii) of this section, EPA suggests replacing “April 1” with “February 1.”

The Department changed the date as suggested.

B. Clean Air Mercury Rule

Note: A Staff Informational Forum, wherein stakeholders and the general public were invited to provide comments on the Department’s Notice of Proposed Regulation for CAMR, was held on November 27, 2006. Prior to this meeting, the Department made a revision to the Notice of Proposed Regulation to increase the Public Health Set-aside account from 20% to 25%. The following written comments were received by the Department:

Duke Energy is prepared to support the state’s adoption of the proposed CAMR upon the acceptance of the following comments:

1. Trading of Hg allowances will be needed to reduce Hg emissions in the state, especially for smaller units where cost-effective technologies are infeasible.

The Department supports the trading of Hg allowances among affected utilities in accordance with its proposed regulation.

2. As the state has not performed a technical analysis to demonstrate the need for a Hg standard more stringent than the proposed federal rules, Duke recommends that any further limitations on Hg be based on a thorough evaluation of how Hg is impacting the environment in the state and a justification of the controls, costs, and benefits for achieving further reductions.

In its proposed regulation, the Department indicates that it may conduct or commission a Hg study in order to determine the Hg emission impacts and the need for additional Hg limitations or reductions.

3. Duke recommends changing the references to the state “allocating” allowances to the word “distributing” so as to avoid confusion over allowances allocated to states by the EPA.

The Department supports this proposed change and has revised the proposed regulation accordingly.

4. Duke avers that Hg allowances kept in the Public Health Set-aside accounts should be distributed to the respective utilities prior to the true-up period upon a showing that allowances in those accounts are needed to cover Hg emissions for the prior calendar year. Transfers of the Public Health Set-aside allowances would later be subject to verification; if allowances are transferred to the utility without justification, then the Department could permanently retire or sell an equal number of allowances from the remainder of the affected utility’s Public Health Set-aside account.

The Department agrees that it will, after reviewing a utility’s emissions report for the prior calendar year, transfer needed allowances from a utility’s Public Health Set-aside account prior to the true-up period. This will prevent utilities from having to purchase allowances from an outside source.

5. Duke suggested a language change in Section 61.40(c)(4)(iii) that Public Health Set-aside allowances could be distributed to a utility for “one or more” of the 2018-2023 control periods.

The Department has discussed this comment with Duke Energy representatives and feels the current language in this section is acceptable to both the Department and Duke.

6. Duke suggested changes to Section 61.40(c)(8) that would expand the authority of the advisory group such that its members must collectively agree to the specifics of the Hg study prior to the commencement of such a study and prior to the sale of any Public Health Set-aside allowances by the Department. Additionally, Duke would eliminate the Department’s ability to sell Public Health Set-aside allowances that the utilities project to use during the years of 2018-2023.

The Department believes the intent of forming the advisory committee is to ensure that collective interests are considered in the design of the Hg study. However, the Department does not agree that the advisory committee should have the authority to deign outright the specifics of the study. The Department also disagrees with the advisory committee placing restrictions on the Department’s ability to sell allowances in the Public Health Set-aside accounts. Furthermore, the Department believes it premature to assume the utilities will definitively exceed their allowances during the years of 2018-2023. Therefore, the Department does not intend to modify this section.

7. Duke does not believe it is substantiated that the creation and existence of the Public Health Set-aside account will result in either a reduction in the number of fish advisories issued in the state or the achievement of a public health benefit. Thus, Duke contends that the Department has not justified the need for the account.

The pathway of Hg from emissions to fish and eventually humans is well established. It is reasonable to assume that a reduction in Hg emissions would result in a reduction of methylmercury in fish tissues. The proposed Hg study would address these issues.

8. Duke indicates that it takes no position on the Department’s proposal to increase the Public Health Set-aside account allowances from 20% to 25% but anticipates it will need to ask for transfer of all Public Health Set-aside allowances for its Lee Steam Station.

This will be allowable under the Department’s proposed CAMR language.

9. Duke is concerned that any problems with monitoring systems at its facilities may result in an inability to submit annual emissions reports by the January 31 deadline.

A utility may submit revised emissions reports to the Department and EPA after the deadline, thus this should have no impact on the Department's proposed CAMR language.

Progress Energy supports the Department's proposed regulation because it allows for flexibility, which is needed because of the uncertainties concerning existing Hg emission levels, efficiency of control technologies, future unit operation, and the current inability to accurately monitor Hg emissions. Progress supports the Public Health Set-aside of allowances proposed by the Department, as well.

Santee Cooper submitted comments at the November 27, 2006, Staff Informational Forum. Santee Cooper agrees that it supports a cap-and-trade approach to CAMR and supports the 20% allowance set-aside. Following are Santee Cooper's relevant points meriting responses by the Department:

1. Although Santee Cooper supports the Public Health Set-aside, should the Department find it necessary to increase the percentage of the utility's set-aside, Santee Cooper requests that the Department extend the sunset date to 2025 due to the uncertainty associated with Hg removal efficiencies and emissions estimations.

Prior to the Staff Informational Forum, the Department revised the percentage of allowances to be placed into affected utilities' Public Health Set-aside accounts from 20% to 25%. During this meeting, Santee Cooper indicated that it supported the increase. The Department does not intend to extend the sunset date to 2025 because it believes that, by 2023, a utility would have had sufficient time to determine what, if any, additional controls or control measures would need to be instituted to meet the required reductions.

2. Like Duke Energy, Santee Cooper recommends that allowances needed from the Public Health Set-aside account be distributed to utilities prior to the true-up period. Santee Cooper, however, advocates the Department provide 100% of all allowances to a utility during the first control period. Should a utility have unused allowances, these will be transferred into the utility's Public Health Set-aside account. If a utility did not have enough allowances to transfer during times of need, the Department would then institute a penalty.

The Department agrees to transfer needed allowances from the Public Health Set-aside accounts to utilities prior to the true-up period. EPA has agreed with the Department that allowances transferred from these accounts that exceed a utility's actual need must be transferred back to the Department by a utility within fifteen (15) days of its submission of a revised emissions report.

3. Santee Cooper expresses concern that there may be higher levels of Hg emissions in South Carolina than is reflected by 1999 ICR data estimates and that there is limited Hg stack test data from the affected utilities. This information is used to illustrate that the emissions calculations provided by the Southern Environmental Law Center do not take into account co-benefits from existing controls in 1999. Santee Cooper thus concludes that SELC's numbers reflect the "best case scenario" for Hg reductions and may not represent a real-world situation.

The Department concurs that SELC's figures underestimate Hg emissions and thus underestimate potential reductions in emissions. This position is supported by subsequent (2001) data, which indicates a Hg emission rate for South Carolina affected utilities of 0.69 tons.

EPA submitted comments as well. The Department offers the following responses to their comments:

1. EPA finds that the definition of “utility” is not relegated solely to Hg budget units (but rather “a group of units”) and does not take into account that an owner might only own one Hg budget unit, that a Hg budget unit might have multiple owners, or that a Hg budget unit could have an operator that is not an owner.

The Department has modified the language comprising the definition of “utility” for clarification.

2. EPA expresses concern that the Department is setting up the state’s allocations according to utility rather than to specific source, as the EPA allowance tracking system follows sources and not utilities. The Clean Air Market Division of EPA confirmed that the State must establish Hg budget source based accounts. Sources may be comprised of one or more Hg budget units.

The Department has revised the language referencing allocation accounts and the Public Health Set-aside accordingly.

3. EPA notes that the Department could move references to Hg allocations in Section 61.4140 to Section 61.4142.

The Department prefers to keep these sections in their current location.

4. EPA intimates that the Department should clarify whether the transfer of allowances from the Public Health Set-aside account will be deposited into an account dedicated to the entire utility or to an individual facility.

The Department will establish one Public Health Set-aside account for each respective utility. Needed allowances from a utility’s Public Health Set-aside account will be deposited into the utility’s affected Hg budget source account.

5. EPA suggests changing language discussing “reimbursement” of Public Health Set-aside allowances to indicate that a “transfer” of allowances from this account would be made. Also, EPA suggests that the Department provide a deadline by which such transfers would be made so that the utilities have sufficient allowances to cover their emissions budget.

The Department has modified the proposed language to accommodate these suggested changes.

6. EPA suggests changing the language in Section 60.4140(c)(5)(ii) to correct redundancy and for clarification.

The Department has modified the proposed language to accommodate these suggested changes. This section is now known as Section 60.4140(c)(4)(ii).

7. EPA suggests changing the language in Section 60.4140(c)(6) to clarify a utility’s ability to buy, trade, or sell Hg allowances.

The Department has stricken this paragraph in its entirety.

8. EPA suggests changing the language in Section 60.4140(c)(7) to clarify that the Department will “transfer” allowances from the Public Health Set-aside account and not “allocate” them. Also, EPA is

concerned that, since a utility will lose any allowances stored in the Public Health Set-aside account after 2024, a utility may be compelled to discontinue implementing Hg reduction measures.

The Department has changed the references to “allocation” appropriately. Also, the Department believes that utilities will avoid discontinuing or failing to implement Hg reduction measures because of language added to Section 60.4140(c)(4), which requires utilities to follow good operating practices.

9. EPA suggests clarifying how Public Health Set-aside allowances will be sold by the Department to fund a Hg study.

The Department has added language to indicate that the methodology for determining how allowances will be sold from the Public Health Set-aside will be considered by the Hg advisory committee.

10. EPA suggests changing the timeframe within which the Department submits Hg allowance allocations to the EPA.

The Department has changed the language to accommodate this suggestion.

11. EPA suggests removing references to procedures for determining allocations if the State does not submit allocations to the EPA.

In accordance with EPA’s suggestion, the Department has deleted language relevant to the above.

12. EPA suggests changing language in Section 60.4142(b).

The Department has changed the language to accommodate this suggestion.

13. EPA suggests changing language in Section 60.4142(c), (c)(1), (c)(2), (d), and (e) for clarification purposes.

The Department originally considered adding these paragraphs as a result of discussions with stakeholders after the Notice of Proposed Regulation had been approved by the Board; however, these paragraphs were never included in the proposed rule. Upon further discussion with the stakeholders, the Department determined that this language was unnecessary and thus EPA’s comments are not applicable.

Southern Environmental Law Center (SELC) also provided comments to the Notice of Proposed Regulations. Comments and responses are as follows:

1. SELC asserts that the Department should require all electric utility units to comply with a MACT standard with regard to Hg emissions within the next three years.

EPA promulgated the CAMR using its authority under Section 111 of the Clean Air Act (not under Section 112 (MACT)), which requires states to adopt the federal CAMR rule as promulgated. If South Carolina does not adopt the federal rule (with or without modification), the EPA will institute the federal rule as promulgated. The Department’s proposed modifications to the federal CAMR language will allow for the creation of a Public Health Set-aside account, whereby unused Hg allowances are permanently retired. The Department believes that this more stringent provision should alleviate some of SELC’s concerns regarding excess Hg emissions.

2. SELC believes that if the State were to adopt the cap-and-trade program authorized under CAMR such that excess Hg allowances could be sold by South Carolina facilities to upwind states, the incidental reductions in Hg emissions for affected utilities complying with CAIR provisions would be minimized.

There is no way to predict if, when, to whom, or where affected South Carolina utilities will sell or trade excess Hg allowances in their respective compliance accounts. It is the Department's belief that most utilities will opt to bank every extra allowance they have in order to maximize their available allowances for compliance in 2018, when South Carolina's Hg budget decreases by approximately 67%. Furthermore, the establishment of the Public Health Set-aside will remove a significant portion of allowances from the pool that is available for sale or trade. NOTE: SELC supports the Department's proposal to withhold and retire 25% of the total Hg allowances as a public health benefit.

3. SELC asserts that power plants are the largest sources of Hg pollution in South Carolina, that South Carolina is particularly vulnerable to Hg pollution, that Hg pollution harms the health of South Carolina residents, that methylmercury contamination in fish and shellfish detrimentally affects South Carolina commercial and sport fishing industries, that national trading programs (Acid Rain Program) have resulted in higher pollution levels in South Carolina.

Although there are many studies that support the concept that Hg is harmful to both humans and flora and fauna, the degree of Hg contamination resulting from coal-fired electric utility deposition has not been studied specific to South Carolina's environment and residents. Therefore, the assertions that the SELC presents in its response to the Notice of Proposed Regulation may not be true to actual conditions in our state. Under its proposed CAMR rule, the Department proposes to fund a statewide Hg study to more clearly evaluate the impact that Hg deposition plays in the emission-to-human biological pathway. The State will respond to the results of the study by requiring necessary additional control measures to ensure the protection of the health of South Carolina's residents and environment. Consequently, the Department has chosen not to make any revisions to its proposed regulation based upon the submission of this type of information by SELC.

4. SELC believes that South Carolina should take similar steps to other states in reducing Hg pollution.

Due to the creation of the Public Health Set-aside, the Department believes that its proposed CAMR rule is more stringent than many states, including neighboring states.

5. SELC indicates that North Carolina's Hg rule is more stringent than South Carolina's because it eventually requires the installation of controls to achieve the maximum level of reduction feasible on all units.

The Department has performed a careful review of North Carolina's Hg rule and finds that, conversely to the supposition that it has an across-the-board requirement for installation of Hg controls at all affected utilities, the rule actually requires facilities to install controls only in the case that they cannot achieve the reductions elsewhere. This is, in essence, the basis for cap-and-trade programs. North Carolina's Hg rule follows the federal CAMR more closely than South Carolina's, as there is no withholding of allowances for a public health benefit. The Department believes that each state has its own environmental, industrial, and geographic dynamics and thus rules such as CAMR should be considered and modified on a specific, case-by-case basis.

6. SELC believes South Carolina should prohibit interstate trading of pollution credits.

The Department believes that the SELC's assumptions on the dynamics of interstate trading by South Carolina utilities cannot be definitively predicted. In fact, the Department believes that interstate trading

of pollution credits will not occur during Phase I of CAMR because the need for additional allowances during Phase II cannot be predetermined. Many utilities may find that they need all the excess allowances for their own facilities, which would limit or eliminate interstate trading.

7. SELC believes that South Carolina should require Hg emissions reductions from sources other than coal-fired power plants.

CAMR applies only to coal-fired electric utilities. However, EPA recently released information that indicates it will establish Hg emissions limits for new cement plants; this will be addressed under a rule separate from CAMR.

8. SELC asserts that new sources should be subject to maximum Hg pollution controls.

New sources would not, under South Carolina's proposed CAMR rule, have a Hg budget. Instead, they would be subject to a New Source Performance Standard review at the time of permitting.

ATTACHMENT H

LEGAL AUTHORITY¹

No plan for attaining a goal, the attainment of which is dependent upon regulatory action, can be used with any degree of effectiveness unless the legal framework is strong. Consequently, the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR 51, as amended, define the necessary statutory powers which must be immediately available to states to carry out the responsibility to the Clean Air Act.

40 CFR 51.230 sets forth six specific requirements for State authority. The South Carolina Pollution Control Act, Act 1157 of 1970, as amended, S. C. Code Sections 48-1-10 thru -350 (1976), provides the State's authority to respond to these requirements. The Attorney General of the State of South Carolina has given an opinion as to the adequacy of South Carolina laws, as follows:

Legal Authority Required 40 CFR 51	Adequacy of S. C. Law	S. C. Statutes Involved
(a) "Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards."	Adequate	S. C. Code Secs. 48-1-20, 48-1-50(23)
(b) "Enforce applicable laws, regulations, & standards, and seek injunctive relief."	Adequate	S. C. Code Sec. 48-1-50(1), (3), (4), (5), (11); Secs. 48-1-120, 48-1-130, 48-1-210, 48-1-320, 48-1-330.
(c) "Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 305 of the Act."	Adequate	S. C. Code Sec. 48-1-290.
(d) "Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard."	Adequate	S. C. Code Sec. 48-1-50(5), (10); Secs. 48-1-100, 48-1-110.
(e) "Obtain Information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, Including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources."	Adequate	S. C. Code Sec. 48-1-50(10), (20), (22), (24).
(f) "Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of	Adequate	S. C. Code Secs. 48-1-50(22), 48-1-270.

¹ Section 2 of the EPA-approved South Carolina Air Quality Implementation Plan (SIP), which defines the State's statutory powers as required in 40 CFR 51.230.

Legal Authority Required 40 CFR 51	Adequacy of S. C. Law	S. C. Statutes Involved
emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.”		

Public Hearings

The South Carolina Pollution Control Act provides for notice and public hearings prior to action by the Board of Health and Environmental Control concerning adoption of regulations and standards, adoption or modification of final compliance dates, and other specified legal actions.

Additionally, Act 176 of 1977 enacted by the South Carolina General Assembly requires, among other things, that at least thirty days public notice be given before adoption, amendment or repeal of any rule. It also requires that the substance of the intended action or a description of the subjects and issues involved be made known. While this act escapes the actual requirement for a public hearing in each case, the two Acts taken together do impose the requirement of a thirty days notice of public hearing, assuring compliance with the requirements of 40 CFR 51.102 as amended.

Public Availability of Information

The South Carolina Pollution Control Act provides for the public availability of any records, report or information obtained under the provisions of the Act. However, upon a showing satisfactory to the Department that records, reports or information, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of the source, the Department shall consider such data confidential.

All source data are kept on file at the offices of the Bureau of Air Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, and are available to the public at this location, Monday through Friday, between the hours of 8:30 a.m. and 5:00 p.m. Such data are retained in the Permit, Source Test, and Emission Inventory Files.

The files contain information as to the source emissions, and these emissions are depicted in comparison to the applicable emission standards or limitations as stated in the Air Pollution Control Regulations and Standards for the State of South Carolina.